No. 24-6697

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

COURTHOUSE NEWS SERVICE,

Plaintiff-Appellee,

v.

SARA OMUNDSON,

Defendant-Appellant.

Appeal from the United States District Court for the District of Idaho, Case No. 1:21-CV-00305-DCN, the Honorable David C. Nye, Presiding

EXCERPTS OF RECORD, VOL. 8

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Attorneys for Appellant Sara Omundson

Exhibit D

William L Girdner November 9, 2022

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1
                 IN THE UNITED STATES DISTRICT COURT
 2
                      FOR THE DISTRICT OF IDAHO
 3
 4
     COURTHOUSE NEWS SERVICE,
                                     ) Case No.
                                      ) 1:21-CV-00305-DCN
 5
                        Plaintiff,
 6
     v.
 7
     SARA OMUNDSON, in her
     official capacity as
 8
     Administrative Director of
     Idaho Courts,
 9
                       Defendant.
10
11
12
13
          REMOTE VIDEOTAPED DEPOSITION OF WILLIAM L. GIRDNER
14
                            NOVEMBER 9, 2022
15
16
17
18
19
20
21
22
23
24
25
     Reported By: Amy E. Simmons, CSR No. 685, RPR, CRR, CRC
                                                        Page 1
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(4 of 297), Page 4sef 227-cv-60305-24-6697-03/06/2025-70kt Firstry: 2/1592 Page 4e of 29718 William L Girdner November 9, 2022

	1 1 10 vember 9, 2022
1 REMOTE VIDEOTAPED DEPOSITION OF WILLIAM L. GIRDNER	1 EXHIBITS (continued)
2	2 NO. PAGE
3 BE IT REMEMBERED that the remote videotaped 4 deposition of WILLIAM L. GIRDNER was taken via	3 Exhibit 31 Complaint (60 pages) 226
5 videoconference by the attorney for the Defendant before	4 Exhibit 32 Supplemental Declaration of William 228
6 Associated Reporting & Video, a Veritext Company, Amy E.	Girdner in Support of Plaintiff
7 Simmons, a Court Reporter and Notary Public in and for	5 Courthouse News Service's Motion for
8 the County of Ada, State of Idaho, on Wednesday, the 9th	Preliminary Injunction (62 pages)
9 day of November, 2022, commencing at the hour of	6
10 9:15 a.m. in the above-entitled matter.	Exhibit 48 Memorandum Decision and Order (29 232
11 12	
13 APPEARANCES (remotely):	7 pages)
14 For the Plaintiff: BRYAN CAVE LEIGHTON PAISNER	
By: Jonathan G. Fetterly, Esq.	9
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ked@dukeevett.com	22
23 mem@dukeevett.com	23
24 Also Present: Chris Ennis, Videographer	24
Sara Omundson	25
25 Page	
	Tuge 1
1 INDEX 2 EXAMINATION	1 PROCEEDINGS
3	2
4 WILLIAM L. GIRDNER PAGE 5	3 THE VIDEOGRAPHER: All right. So we are
By: Ms. Duke6, 233	4 recording and we are on the record. Today's date
6 Mr. Fottorik	5 is November 9, 2022. The time is 9:15 a.m.
Mr. Fetterly231	
8	6 For the record, this is the remote
9 EXHIBITS 10 NO. PAGE	7 videotaped deposition of 30(b)(6) designee William
11 Exhibit 24 Plaintiff's Objections to 12	8 Girdner. It is taken by the Defendants in the
Defendant's Amended Rule 30(b)(6)	9 matter of Courthouse News Service vs. Omundson.
12 Deposition Notice of Courthouse News Service (4 pages)	10 It is Case No. 1:21-cv-00305-DCN. It is in the
Service (4 pages)	
Exhibit 25 Defendant's Amended Notice of 48	11 District Court for the District of Idaho.
14 30(b)(6) Deposition Duces Tecum to Courthouse News Service (9 pages)	The videotaped deposition is being held
Courthouse News Service (9 pages) 15	13 remotely.
Exhibit 26 "Appendix A" (6 pages) 54	14 The videotaped deposition is being
16 Exhibit 27 Plaintiff's Responses to Defendant's 104	15 recorded by Chris Ennis and reported by Amy
17 Second Set of Interrogatories First	
Set of Requests for Admissions (41	16 Simmons of Associated Reporting & Video, a
18 pages) 19 Exhibit 28 Declaration of William Girdner in 154	17 Veritext Company.
Support of Plaintiff Courthouse News	18 And if counsel will please state their
20 Service's Motion for Preliminary	19 appearances and any stipulations for the record.
Injunction (163 pages) 21	20 MR. FETTERLY: Yes. Appearing for
Exhibit 29 Various Letters Signed by Bill 220	21 Plaintiff, Courthouse News Service and
22 Girdner, Bates Nos. CNS_013270	
through 013279 (10 pages) 23	22 Mr. Girdner, I am Jon Fetterly with the Bryan Cave
Exhibit 30 Email Chain, Top One Dated 10/13/22 225	23 Leighton Paisner law firm.
24 to Katherine Keating from Abigail	104
Dioz Potos Nos CNS 012200 through	MS. DUKE: Keely Duke and Molly Mitchell
Diaz, Bates Nos. CNS_013299 through	
25 013301 (3 pages) Page	25 on behalf of Sara Omundson. And we have Sara in

(5 of 297), Page 5 of 291-cv-6080524 06975 03/116/21965. Pkffill 17/219512 Page 5 of 29718

William L Girdner November 9, 2022

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1 in depositions, you know, in the context of how
 1 the room with us here today.
 2
         THE VIDEOGRAPHER: And if the court
                                                          2 you're being deposed today, any other experience
                                                          3 with depositions beyond that?
 3 reporter will please swear the witness.
                                                          4
                                                                A. No.
 4
                                                          5
                                                                Q. So you know, certainly, the ground rules.
              WILLIAM L. GIRDNER,
                                                          6 I'll just go through them quickly with you so that
 6 a witness having been first duly sworn to tell the truth,
                                                             we're on the same page for this deposition.
 7 the whole truth, and nothing but the truth, testified as
 8 follows:
                                                                   As I said in yesterday's deposition that
 9
                                                             you watched, this is not an endurance contest.
                                                         10 We're not here to see how long you can sit there
10
                EXAMINATION
11 BY MS. DUKE:
                                                         11 without a break. So if you need a break, just let
                                                         12 us know. We try to take one about every hour.
      Q. All right. Good morning, Mr. Girdner.
12
                                                                   All I ask is that you answer whatever
13 How are you today?
      A. Good.
                                                         14 question is pending before we take that break. Is
14
                                                         15 that fair?
15
      Q. If you would, state your full name for
                                                         16
                                                                A. Yes, that's fair.
16 the record and then provide your date of birth.
      A. William L. Girdner, October 7th, 1950.
                                                         17
                                                                Q. If I ask you a question that you don't
17
                                                         18 understand, will you please let me know?
18
      Q. Where do you reside?
19
      A. Pasadena, California.
                                                         19
                                                                A. Of course.
20
      Q. Where are you today?
                                                         20
                                                                Q. If you're going on to answer my
21
      A. In Pasadena, California.
                                                         21 questions, we'll assume, then, that you understood
22
      Q. Is anyone in the room with you?
                                                         22 them.
23
                                                         23
                                                                A. Got it.
24
      Q. Have you been deposed before?
                                                         24
                                                                Q. You also know that there will be
25
                                                         25 objections from time to time. You can go ahead
      A. Yes.
                                                  Page 6
 1
       Q. On how many occasions?
                                                          1 and answer unless you're instructed not to answer.
 2
       A. At least four.
                                                          2
                                                                   Do you understand that?
       Q. In what context? All in a similar suit
                                                          3
 3
                                                                A. Certainly.
 4 like the one we're talking about today, or in
                                                          4
                                                                Q. And you're doing a great job of providing
 5 different context?
                                                          5 audible, clear responses for Amy Simmons, our
 6
       A. In similar suits.
                                                             court reporter. So keep that up.
 7
       Q. Which jurisdictions?
                                                          7
                                                                   If for some reason throughout the
 8
       A. Central District of California. I
                                                             deposition we need to clarify something, we'll do
 9 think -- I'm trying to think if that's all of
                                                          9 that. And we're just doing that so we have a
10 them.
                                                         10 clean record.
11
          They may have all been in the central
                                                         11
                                                                A. That's fine.
12 district, but I'm losing track of one of them. I
                                                                Q. Now, you understand that you're under
13 think it's all the central district. I'm not
                                                         13 oath today, correct?
14 sure.
                                                         14
                                                                A. Yes.
                                                                Q. And you understand that the answers that
15
       Q. You know, throughout today --
                                                         15
16
       A. Sure.
                                                         16 you provide to the questions that I ask will be
       Q. -- something might pop in your brain.
17
                                                         17 your sworn testimony in this case?
18 And it's early. So if it does, just let us know.
                                                         18
                                                                A. Yes.
19
       A. Yeah.
                                                         19
                                                                Q. And that those answers to the questions
       Q. I bet you didn't wake up to a bunch of
20
                                                         20 that you're providing could be used to the
21 snow like we did, though.
                                                         21 detriment of CNS to the extent they are considered
22
       A. A lot of rain last night.
                                                         22 to be an admission against CNS's interest?
23
       Q. That's good.
                                                         23
                                                                A. I understand that.
24
       A. Yeah.
                                                         24
                                                                Q. You also understand that this -- you'll
25
       Q. All right. So other than being deposed
                                                         25 have an opportunity to review your deposition.
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3 (Pages 6 - 9)

Page 9

(6 of 297), Page get 297-cv-6080524069303/116/2025-Pktfilltry: 2195922apaget 39718

William L Girdner November 9, 2022

- 1 A. I've done it before, yes.
- 2 Q. Okay. And you understand that's not a 3 take-home test?
- 4 A. I'm not sure what you mean by that.
- Q. Well, what I mean is you're providing 5
- 6 sworn answers today. You're under oath. You're providing answers to my questions. 7
- Do you understand that you need to be providing full, complete, truthful answers today 10 to my questions?
- 11 A. To the best of my ability, certainly.
- 12 Q. And that when you review your transcript,
- 13 you're reviewing it merely to determine whether
- 14 Ms. Simmons accurately transcribed your testimony?
- A. I've made corrections before. So I think
- 16 if I get something wrong, I can correct it. 17 Q. Okay. Well, I strongly disagree with
- 18 that, as do our Idaho district courts.
- 19 MS. DUKE: So I guess I'm not sure how to
- 20 continue, Jon, today with the general objections
- 21 you made that basically whatever he says today can
- 22 be changed, modified.
- 23 I'm not comfortable continuing today's
- 24 deposition without an assurance that he's going to
- 25 provide truthful, responsive answers, and that

Page 10

- 1 he's not going to get his deposition transcript 2 and substantively change his answers.
- 3 So without that, I won't go forward
- 4 today, and we'll address this issue with the court
- 5 and get a ruling from the court on it first.
- MR. FETTERLY: I don't believe your 6
- 7 comments reflect the testimony from Mr. Girdner.
- 8 I'm not sure we've identified any reason not to go
- 9 forward today.
- MS. DUKE: Well, I'm reading your 10
- 11 objections, and your objections say that he has
- 12 the right to object on any ground after the fact
- 13 and that he has the right to revise, correct,
- 14 supplement, or clarify any of his responses.
- 15 And that's just not how this is done.
- 16 And I won't do that. I'm not going to have my
- 17 client spend money on a deposition that he's not
- 18 going to stick with his answers.
- 19 So I recommend that we postpone today --
- 20 obviously that's going to set all of our deadlines
- 21 off -- and that we go ahead and have this teed up
- 22 with the judge. I might be able to get the
- 23 judge's clerk on the line today and deal with
- 24 this, but I won't go forward and waste the court's
- 25 money.

Page 11

- MR. FETTERLY: Well, let's take a quick
- 2 break off the record. I think we can go forward
- 3 today, and let's discuss how we can do that.
- 4 Because I think we're ready to go. And I think we
- 5 can discuss the objection and perhaps maybe even
- withdraw it so that we can then move forward.
- 7 The purpose of the objection wasn't meant
- to, you know --8
- 9 MS. DUKE: I've never seen an objection
- 10 like this, ever.
- 11 MR. FETTERLY: Okay. Let's go off the
- 12 record and discuss briefly. And then we can
- 13 figure out our plan going forward.
- 14 MS. DUKE: Before we go off the record,
- 15 Ms. Simmons, I do want to note for the record I've
- 16 never seen this objection.
- 17 I will mark as our next exhibit the
- 18 objections that were made this morning at
- 19 9:00 a.m. Mountain to the 30(b)(6) and call out
- 20 specifically paragraph 2 and 3 to that set of
- 21 objections.
- 22 (Deposition Exhibit No. 24 was marked.)
- 23 MS. DUKE: Go ahead and go off the
- 24 record.
- 25 THE VIDEOGRAPHER: Okay. So the time is

Page 12

- 1 9:23, and we are off the record.
- 2 (Discussion held off the record.)
- 3 THE VIDEOGRAPHER: All right. So we are
- 4 recording. The time is 9:27 a.m., and we are back
- on the record.
- 6 MS. DUKE: All right. We were just off
- 7 the record and discussed the objections that were
- served this morning at about 9:00 Mountain, which
- 9 are Exhibit 24 to this deposition.
- 10 Counsel for CNS has agreed to remove in
- 11 paragraph 2 the first full sentence, which
- 12 includes an A and a B, of the objections so that
- 13 we do not need to be concerned about changes to
- 14 the deposition that do not conform with the
- 15 Federal Rules of Civil Procedure or the District
- 16 of Idaho's application, interpretation, and use of
- 17 those rules.
- And so with that, what we'll note on
- 19 Exhibit 24, which is the general objections, we
- 20 will strike through that sentence, including A and
- 21 B.
- 22 I understand -- I guess a bit of a
- 23 concern is the remainder of that sentence for us
- 24 on not waiving any objections to relevancy,
- 25 materiality privilege. I agree with that. I

(7 of 297), Page Zsef 2:27-cv-68885245969363/AR/APE5-PktABtry:2195922apeaget 397.18

William L Girdner November 9, 2022

4

5

10

11

13

14

15

16

3 my questions?

9 type of thing?

A. I do.

A. You bet.

A. No.

- 1 don't think that's something that needs to be
- 2 stated. That's simply stated in the Federal Rules
- 3 of Civil Procedure.
- 4 But if you have an objection to make to a
- 5 question today that are required by the Federal
- 6 Rules of Civil Procedure, then you need to make
- 7 those objections today. Those are objections,
- 8 form objections. Not relevancy, not materiality.
- Certainly you can make privilege 9
- 10 objections today, to the extent those exist. If
- 11 not, there will be a privilege waived.
- So I think at this point I'm comfortable 12
- 13 going forward as long as I get some assurances to
- 14 the questions that I'm going to ask.
- Do you want to add anything, 15
- 16 Mr. Fetterly, before I ask those questions?
- MR. FETTERLY: Yes. I agree that that 17
- 18 accurately reflects our conversation off the
- 19 record.
- 20 And I would just add -- and I believe you
- 21 noted -- that Courthouse News is still reserving
- 22 all rights under the Federal Rules of Civil
- 23 Procedure, both with respect to the questions and
- 24 responses that will go forward today as well as
- 25 Courthouse News's ability to review and address

17 If I ask you a question and you provide a response

Page 14

21 A. That's fine. 22 Q. If you're going on to answer my next

20 response to that question. Okay?

18 and then you finish your response, we'll

- 23 question, we'll all assume that you, to your
- 24 satisfaction, completed your answer as fully as

19 understand that you've provided a complete, full

1 you on any medications that would impact your

2 ability to provide complete, truthful answers to

Q. Do you also understand that you'll have

Q. All right. And you agree to go forward

Q. One other ground rule to the deposition.

6 an opportunity to review your transcript, and with

7 respect to that review, that is not an opportunity

8 for you to add to answers, change answers, that

12 with your deposition with that understanding?

Q. All right. I appreciate that.

A. I now understand that.

25 you needed to. Is that fair?

Page 16

- 1 the transcript upon receipt. We'll proceed
- 2 according under the federal rules.
- 3 And with that, I believe we can go
- 4 forward.
- 5 Q. (BY MS. DUKE) All right. So,
- 6 Mr. Girdner, we were talking, and I asked you a 7 question.
- 8 I asked you, "What I mean is you're
- 9 providing sworn answers today. You're under oath.
- 10 You're providing answers to my questions.
- 11 "Do you understand that you need to be
- 12 providing full, complete, truthful answers today
- 13 to my questions?"
- 14 A. Absolutely. That's my full intention.
- Q. And your answer prior was to the best of 15 16 your ability, certainly.
- 17 Is there anything preventing you today
- 18 from understanding my questions?
- 19 A. No.
- Q. Are you on any medications, have any
- 21 medical condition that would somehow impact your
- 22 ability to understand what's being asked of you
- 23 today?
- 24 A. No.
- 25 Q. Do you have any medical condition or are Page 15

- A. Yeah. I mean, you asked me earlier if I 1
- 2 thought -- for example, in the deposition if I
- 3 remembered where the heck it was, that I could add
- 4 that. So if I think of something that would
- 5 complete the answer or be -- you know, add to it,
- 6 I think that would be fine, I'm assuming.
- 7 Q. It would, but I'd want that today.
- 8 A. Yeah. Yeah. Of course. Of course.
- 9 Q. This is my chance to talk to you. So if
- 10 you're going on and answering my questions, we'll
- 11 assume, then, that you provided a full, fair
- 12 response to those unless you indicate you may need
- 13 to think about them a little bit.
- 14 A. That's fine.
- 15 Q. All right. What do you do for a living,
- 16 sir?
- 17 A. I'm the editor of Courthouse News
- 18 Service.
- 19 Q. How long have you been in that position?
- 20 A. At least 30 years.
- 21 Q. Just give me a thumbnail sketch of your
- 22 educational background.
- 23 A. I went to -- I'm assuming post-graduate?
- 24 High school and --
- 25 Q. Yeah, post high school.

Page 17

5 (Pages 14 - 17)

(8 of 297), Page & sef 297-cv-60805240697503/116/21265-Pk#Filtry: 2/19922apage f 29718

William L Girdner November 9, 2022

A. Yeah. Yeah. Reed College, undergrad, 1 goes to the courthouses she described yesterday, 2 literature degree. 2 looks on the public kiosks. And then for the federal coverage of, I 3 Went to Lewis & Clark law school, got a 4 law degree. 4 believe, Montana, Wyoming, and Idaho, she goes on And then I've worked as a journalist 5 to PACER and covers remotely. 5 Q. And is she a good employee? 6 almost the entire time since. 7 7 Q. Do you have any certifications in A. Yes, indeed. 8 8 journalism? Q. Trustworthy employee? A. I've gotten -- I've gotten the ID from 9 A. Certainly. 10 the LAPD and the sheriff. As far as educational 10 Q. And I'm assuming at no point in time 11 degrees in journalism, no. 11 yesterday during her deposition did you feel that Q. With respect to this case, I know that 12 she was being dishonest in answering her 12 13 we've talked about -- well, let me ask this: What 13 questions; is that correct? 14 are you tasked to do with CNS? What's your job 14 A. Certainly not. 15 responsibility? Q. And I'm assuming you would defer to her 15 16 A. It's running the whole show. So that 16 from the standpoint of the specific process that 17 means making sure that the -- we're publishing our 17 she followed back when it was paper filing; is 18 reports, that the news site is operating 18 that correct? 19 correctly, and that the content of our news site 19 A. Yes. There was a predecessor to her, 20 which was Phil Janquart. I don't think she knows 20 and our publications is of high quality. But I also have responsibility for all 21 how he conducted his work. 22 the major business decisions in keeping Courthouse 22 Q. But certainly she was at Courthouse News 23 News afloat. Sorry. That includes litigation, of 23 a few months before some of the counties started 24 course. 24 to go electronic, and you would defer to her as to 25 Q. How many employees do you have? 25 how she handled reporting on newly filed paper Page 18 1 A. It's -- it shifts, but it's around 240. 1 complaints? Q. And when I say "employees," do you also 2 A. I think her description of how she did it 3 have, like, independent contractors? Or is that was accurate. 4 kind of the -- how many agents does --Q. And I'm assuming that you would also rely A. Right. We have very few independent 5 on however Mr. Janquart would testify as to what 6 contractors. I think almost everyone is an 6 his process was in reporting on newly filed paper 7 employee. They're not all full time. Some of 7 complaints when he worked for CNS; is that 8 them are part-time. 8 correct? Q. Got it. And you had an opportunity 9 A. Sure. I mean, I also have some 10 yesterday to attend the deposition of one of your 10 independent knowledge of how that was done. 11 reporters in Idaho; is that correct? 11 Q. And how do you have that knowledge? 12 A. That's correct. 12 A. Through conversations with Mr. Janquart 13 Q. And her name is? 13 and his bureau chief. 14 A. Cathy Valenti. Q. With respect to Ms. Valenti's description 15 Q. And Ms. Valenti is Courthouse News's 15 of her process --16 reporter here; is that correct? A. Oh, I'm sorry. I'm sorry. Can I add one 16 17 A. She's based in Boise, yes. 17 thing? I apologize for interrupting you. Q. And her job is to do the Monday through 18 18 Q. Sure. 19 Friday Big Sky Report; is that correct? A. To the last question, also through 20 A. She's responsible for the Big Sky Report, 20 correspondence, written correspondence with the 21 that's correct. 21 clerk at the time. 22 Q. What's your understanding as to the 22 Q. At what time? 23 process she will go through to make that Big Sky 23 A. Chris Fry was the clerk when Phil

6 (Pages 18 - 21)

Page 21

24 Janquart was covering the court and I believe when

Page 19

24 Report each Monday through Friday?

A. Well, for the Idaho portion of it, she

25

25 Cathy Valenti started.

(9 of 297), Page get 2:27-cv-6080524069363/116/2025-Pktfilltry:2195922apaget 397.18

William L Girdner November 9, 2022

- 1 Q. And do you know which district?
- 2 A. Ada County.
- 3 Q. Anything else to add?
- 4 A. No. I'm done.
- Q. So now moving into the e-filing time
- 6 periods, once Idaho's counties went on to the
- 7 e-filing, would you agree that Cathy is the one
- 8 with the best knowledge as to what her process is
- 9 in reviewing filings and then reporting on those
- 10 filings?
- 11 A. Yes, of course.
- 12 Q. So with respect to when Mr. Janquart
- 13 worked here, you indicated you had some knowledge
- 14 through conversations with him and then through
- 15 correspondence with Mr. Fry.
- 16 Tell me what it is your understanding was
- 17 related to how Mr. Janquart would review
- 18 complaints and then report on them.
- 19 A. He received -- I don't know if it was
- 20 called a cart or a bucket -- of the new cases at
- 21 the end of the day that was all the new cases
- 22 filed that day. In other words, the court was
- 23 providing same-day access to paper filings.
- 24 Q. And that was in Ada County?
- 25 A. Yes.

Page 22

- Q. Do you have any idea what the process was 1
- 2 for Mr. Janquart in any other county other than
- 3 Ada County?
- A. No. We call it circuit riding. In other
- 5 words, he went to the other courts on a certain
- 6 schedule, but I don't know specifically what
- 7 courts or what the schedule was.
- O. And you would defer to him as to the
- 9 courts and the schedule?
- A. Yes. 10
- Q. You would also defer to Ms. Valenti as to 11
- 12 the courts and schedule that she testified to
- 13 yesterday?
- 14 A. Yes, I would.
- Q. All right. So when you say there was a
- 16 cart or bucket of the cases that were newly filed,
- 17 those are cases that had been provided to the
- 18 district court clerk. And again, I'm talking, you
- 19 know, in Mr. Janquart's time, so this is obviously
- 20 pre-electronic filing -- that those would be
- 21 complaints that the court clerk had accepted into
- 22 the case file and then provided us a copy?
- A. No, I don't agree with that. 23
- 24 Q. Tell me why.
- 25 A. The cases had been filed -- in other

1 words, they'd been passed across the counter and

- 2 stamped. I don't believe they were docketed. Q. And why don't you believe they were
- 4 docketed? What's your basis for that? Because
- 5 that's contrary to Ms. Valenti's testimony. A. I think we had access before all the
- 7 cases were docketed. That's my recollection.
 - Q. And what's that recollection based on?
- 9 A. The conversations with Janquart and with
- 10 the bureau chief and the letter from the clerk.
- O. And who was the bureau chief?
- 12 A. Chris Marshall.
- 13 Q. And what did Chris Marshall tell you was
- 14 the process Mr. Janquart went through to look at
- 15 newly filed complaints in Ada County?
- A. He would get the cart -- or the bucket, I
- 17 think it was called. That's my basic
- 18 recollection. And the fact that it was all same
- 19 day.
- O. What else would -- I'm not understanding 20
- 21 how that would somehow tell you that those had not
- 22 yet been accepted in the case management file.
- 23 So he told you he would get a bucket with
- 24 stamped complaints on them, and then that that
- 25 would happen typically in the same day.

Page 24

- What more did he tell you other than
- 2 that?

1

- 3 A. My recollection was it was ahead of
- 4 docketing.
- 5 Q. And who told you that?
- 6 A. That, I'm not clear on. But I'm
- 7 obviously being straightforward. It's -- I don't
- know if Phil told me that or I just -- that's how
- 9 I understood the situation to be from all of the
- 10 conversations.
- 11 Q. Well, do you have any documentation of
- 12 anyone during Mr. Janquart's time stating that
- 13 what Mr. Janquart was reviewing was ahead of
- 14 docketing?
- 15 A. No.
- 16 Q. So your only basis for your belief on
- 17 that is your recollection of someone telling you
- 18 that but you don't know who, correct?
- 19 A. No. In other words, Chris Fry, the
- 20 clerk, sent the letter saying we had access the
- 21 same day. And in my experience, if we have
- 22 100 percent access to same day, it's not possible
- 23 for the clerk to docket everything the same day. Q. All right. Well, that's your experience. 24
- 25 I'm talking about Idaho here.

Page 25

7 (Pages 22 - 25)

William L Girdner November 9, 2022

- 1 Did you at any point in time ask Mr. Fry
- 2 whether or not the complaints that were included
- 3 in the bucket each day had, in fact, been
- 4 docketed?
- 5 A. No, I did not.
- 6 Q. Did you at any point in time ask the
- 7 bureau chief, Mr. Marshall, whether the complaints
- 8 provided in the bucket each day that Mr. Janquart
- 9 would then review had been docketed?
- 10 A. That, I don't recall. I don't recall
- 11 asking him that.
- 12 Q. Do you recall asking anyone in the state
- 13 of Idaho when Mr. Janquart was reporting for CNS
- 14 whether the complaints included in the bucket in
- 15 Ada County and provided each day had been
- 16 docketed?
- 17 A. I believe I talked with Phil about that,
- 18 but that's a vague memory.
- 19 Q. And what is your vague memory in that
- 20 regard? Do you have any specifics?
- A. That not all the cases were docketed.
- Q. Did he tell you what his basis for that
- 23 belief was?
- A. I don't recall.
- 25 Q. Now, you understand that this is contrary

- 1 she used when Ada County was paper filing, was
- 2 there any point in time when you said, "That's not
- 3 what I remember"?
- 4 A. No, there was no point in time.
- 5 Q. Was there any point throughout that
- 6 entire deposition where you thought, "I've got to
- 7 correct that. That is not accurate what she's
- 8 saying"?

13

- 9 A. There were a number of points in the
- 10 deposition where you were characterizing the
- 11 "filed" in a way that I didn't agree with, and I
- 12 don't think she well understood.
 - Q. Anything else?
- 14 A. No, that's it.
- 15 Q. So was there any point in time when she
- 16 described her job and how she did her job where
- 17 you went, "That's not what she was supposed to be
- 18 doing, and that's not what I understand" --
- 19 A. Oh, no. No. No. She did her job
- 20 correctly.
- 21 Q. Okay. And she testified at no point in
- 22 time did CNS request that she actually go and talk
- 23 to the people standing in line who were filing to
- 24 ask, "Hey, what are you going to file today,"
- 25 correct?

Page 26

Page 28

- 1 to what Ms. Valenti testified to yesterday,
- 2 correct?
- 3 MR. FETTERLY: Objection; argumentative,
- 4 misstates testimony.
- 5 THE WITNESS: Yeah, I don't recall that.
- 6 Q. (BY MS. DUKE) Okay. Well, as I asked
- 7 you before, you would defer to Ms. Valenti's
- 8 description of how she goes about -- or how she
- 9 went about reviewing the bucket of complaints when
- 10 there was paper filing, correct?
- 11 A. The process she went through, yes.
- 12 Q. And you have no reason to dispute that
- 13 process that she testified to under oath
- 14 yesterday, correct?
- 15 A. Yeah, I just -- I would -- and I'm not
- 16 trying to play games with you, Ms. Evett. I
- 17 prefer to, rather than a blank approval, know what
- 18 you're talking about of what she said.
- 19 Q. No, you attended her deposition.
- 20 A. I did.
- Q. And I'm asking you, was there anything in
- 22 her deposition where you went, "That is just
- 23 wrong"?
- A. No, there was not.
- Q. When she was describing the process that Page 27

- 1 A. I've never requested that of anyone, and
- 2 I've never done it myself.
- 3 Q. And you would never request that of
- 4 anyone who works for you, correct?
- 5 A. Certainly not.
- 6 Q. And why?
- 7 A. The cases haven't been filed yet.
- Q. Why is that an important distinction for
- 9 you that if the cases haven't been filed yet, we
- 10 don't want to report on them?
- 11 A. Because they haven't crossed into the
- 12 official sector. They're not in the court's
- 13 possession. They're not filed. That's the word I
- 14 used. That's what I meant, filed.
- 15 Q. But why is that important for you? Why
- 16 is it important that complaints be filed before
- 17 you report on them?
- 18 A. They're in the possession of the court.
- 19 They're court record today.
- 20 Q. So once they become a court record, that
- 21 is when you believe the complaint should be
- 22 reported on, correct?
- 23 MR. FETTERLY: Objection. Objection;
- 24 vague and ambiguous as to the term "court record."
 - Q. (BY MS. DUKE) Well, let me use your own Page 29

8 (Pages 26 - 29)

25

(11 of 297), Pagas 1:1.25227-60805240697503(116/21265-7)kHiptry:2195928apade 26 29718

William L Girdner November 9, 2022

- 1 testimony. You specifically just testified that
- 2 once they're in the possession of the court,
- 3 they're a court record, that that is when they're
- 4 ripe to be reported on.
- 5 A. Yeah, I think you're seizing on the word
- 6 "record." I mean when they're filed. When they
- 7 cross into the court and are stamped. That's what
- 8 I mean.
- 9 Q. When they're actually docketed and filed?
- 10 A. No, that's not what I mean.
- 11 Q. Tell me what you mean.
- 12 A. Across the counter and filed.
- 13 Q. So if I'm looking at a piece of
- 14 paper -- and I started out as a runner, so I know
- 15 this process well because it was back in the paper
- 16 days.
- I would go to the courthouse for the law
- 18 firm I worked for. I would have the complaint.
- 19 I'd have the filing fee with it.
- I would hand it to the court clerk. I
- 21 would hand the filing fee to them.
- And the great majority of time they would
- 23 say, "Yep. All right. Thank you. We'll take
- 24 your check. We'll take your complaint."
- They would stamp it in front of me, and I

Page 30

- 1 filing fee amount and bring it back," and then
- 2 they would accept it and file it.
- 3 You're not reporting on those -- you're
- 4 not going to stop that clerk and say, "Hey, what
- 5 did you just try to file?" That's what I'm trying
- 6 to get to.
- 7 A. You're describing a hypothetical that
- 8 I've never seen. Okay? I'm talking about cases
- 9 that have crossed the counter.
- 10 Q. Okay.
- 11 A. So in your instance the case didn't cross
- 12 the counter. It's not received by the court. I
- 13 don't think we would be reporting on it.
- 14 Q. Right. That's what I was looking at.
- 15 Thank you.
- So let's talk about CNS has the
- 17 responsibility for timely news reporting, correct?
- 18 A. Yes. Most news organizations do.
- 19 Q. And you would agree that the timeliness
- 20 of your Big Sky Report is a fundamental report of
- 21 CNS's value to its subscribers, correct?
- A. Indeed.
- 23 Q. And you listened to the testimony of
- 24 Ms. Valenti. At no point in time has Courthouse
- 25 News demanded that she work on Friday nights or

Page 3

- 1 would walk away.
- 2 A. That's right.
- 3 Q. That's what you mean by "filed," correct?
- 4 A. Correct.
- 5 Q. All right. Now, there were also times
- 6 when we would go and I would hand something and
- 7 they would say, "This doesn't have a signature,"
- 8 or "The filing fee is wrong. You've got to go
- 9 back and correct that."
- Those are not the complaints that you're
- 11 reporting on, correct?
- MR. FETTERLY: Objection; vague and
- 13 ambiguous, overbroad.
- 14 THE WITNESS: Yeah, I don't quite
- 15 understand your question. It's kind of a
- 16 hypothetical. Give it another try, would you,
- 17 please?
- 18 Q. (BY MS. DUKE) Sure. There were also
- 19 times when I would actually go as a clerk, a
- 20 runner, and I would hand the clerk the document
- 21 and they would look at me and say, "It's missing a
- 22 signature here." Or, "You have the wrong filing
- 23 fee."
- And they would say, "You've got to go
- 25 back, get the signature, and go get the correct

- 1 the weekends to report on something that is filed
- 2 either after she did her last look on Friday or
- 3 over the weekend, correct?
- 4 A. Reporters often work late or check
- 5 filings late when they have access to filings
- 6 later. But in her --
- 7 Q. That's not my question.
- 8 A. Yeah. There has been no need to ask her.
- 9 Let me try to answer your question correctly.
- There has been no need to ask her because there's no availability.
- So, yes, you're correct. We have not
- 13 asked her to stay late after 5:00 or to
- 14 work -- I'm sorry. I take that back.
- Okay. Let me answer carefully.
- 16 Q. Well, and just so you know, I want you to
- 17 answer all questions carefully.
- 18 A. Of course.
- 19 Q. So don't qualify things by saying, "I'm
- 20 going to answer carefully," or "Let me be straight
- 21 with you." That's how you should be the whole
- 22 deposition.
- 23 A. Of course. I understand I'm under oath,
- 24 Ms. Evett.
- 25 Q. Wonderful. And my name is not Ms. Evett.

1 age 33

William L Girdner November 9, 2022

- 1 It's Ms. Duke. I'm quite proud of that. My law
- 2 firm is Duke Evett.
- 3 A. Sorry. Sorry. I apologize.
- 4 Q. No problem.
- 5 A. I'm looking at your screen. I apologize.
- 6 No, I think getting names correct is very 7 important.
- 8 Q. Yeah. Thank you.
- 9 A. So we've never asked her to work past
- 10 when she files her report. But she completes her
- 11 report later in the day. So 6:00, I would
- 12 estimate, is when she files her report.
- 13 Q. Have you ever asked her to work on the
- 14 weekends and report on anything that's filed after
- 15 typically 6:00 p.m. on Friday or over the weekend?
- 16 A. Not that I know of.
- 17 Q. Okay. Now, she is also responsible for
- 18 reporting on the federal court filings in the
- 19 District of Idaho, the District of Wyoming, and
- 20 the District of Montana, correct?
- A. Correct.
- Q. And those are filing systems that if
- 23 something is filed in the district court of the
- 24 District of Idaho at 9:00 p.m., let's say, on a
- 25 Friday night, those are accessible to Ms. Valenti

Page 34

- 1 Idaho?
- 2 A. No.
- 3 Q. Are you aware of any of these mop-up
- 4 reporters finding a complaint that's been filed
- 5 after Ms. Valenti submitted her Big Sky Report and
- 6 doing an additional one that day?
- 7 A. It's quite possible -- and I mean this --
- 8 it's quite possible -- I mean everything I'm
- 9 saying.
- 10 It's quite possible that they're
- 11 reporting it. I just don't know specifically.
- 12 Q. My question is are you aware of whether
- 13 or not any of these reporters have submitted an
- 14 additional Big Sky Report if they found something
- 15 that was filed after Ms. Valenti did the day's Big
- 16 Sky Report?
- 17 A. They would report on the complaint if
- 18 they found one. But they wouldn't submit a
- 19 separate report.
- Q. Where would they report on such
- 21 complaint?
- A. It would go into our database.
- Q. But would it go out to the subscribers?
- 24 A. Certainly, if there was somebody who
- 25 asked for a notice on the topic or on those

Page 36

- 1 to review?
- 2 A. That's correct.
- 3 Q. And they would be accessible for her to
- 4 review on Saturday or Sunday, correct?
- 5 A. Yes, correct.
- 6 Q. And Courthouse News has never asked her
- 7 to work later on Friday or on the weekends or on a
- 8 holiday to report on cases in the federal courts
- 9 for Idaho that are filed after hours?
- 10 A. That's correct. We do have other
- 11 reporters in different time zones who check late
- 12 in federal courts. So, for example, in Alaska and
- 13 I think Hawaii.
- So there are mop-up reporters who check
- 15 for late filings, but I don't know their
- 16 particular schedule and whether it includes the
- 17 federal courts in Montana and Idaho and Wyoming.
- 18 Q. And who are these mop-up reporters?
- 19 A. Well, there's Julie St. Louis in Alaska
- 20 who is one of them. I think there's a couple
- 21 others, but that's the one I can think of.
- 22 Q. Are you aware --
- A. Because of her time zone.
- Q. Are you aware of a Big Sky Report ever
- 25 being published twice in one day in the state of
 - Page 35

- 1 defendants.
- 2 Q. But only if someone asked?
- 3 A. Yeah, if there was a request.
- 4 Q. Now, it's my understanding that in your
- 5 role at Courthouse News that you have developed
- 6 extensive personal knowledge of the procedures
- 7 that courts use both now and in the past to
- 8 intake, docket, and provide access to new
- 9 complaints; is that correct?
- 10 A. That's correct.
- 11 Q. Tell me what you have done in the state
- 12 of Idaho to develop extensive personal knowledge
- 13 of the procedures that the Idaho state courts
- 14 used -- or currently use, I'm sorry -- with
- 15 respect to electronic filings.
- 16 A. Other than what I've already described.
- 17 In other words, talking with or reviewing the
- 18 correspondence from Chris Fry, listening to
- 19 yesterday's testimony, and discussing the report
- 20 over the years. I've never been to the
- 21 courthouses to do the reporting myself. In Idaho,
- 22 I mean.
- Q. Have you reviewed any of the Idaho Rules
- 24 of Civil Procedure to develop a personal knowledge
- 25 of the procedures the courts use?

Page 37

10 (Pages 34 - 37)

(13 of 297), Pagas 131.252-27-6086524-0693634166/2025-Pkt Fight V:219592 2apa 13 25 29 118

William L Girdner November 9, 2022

- 1 A. I've at times looked at the rules.
- 2 Q. Okay. Any rules jump out to you that
- 3 would be applicable to this case?
- 4 A. No, not one that I can think of.
- Q. Have you reviewed any of the Idaho
- 6 electronic filing rules that have been adopted by
- 7 the Idaho Supreme Court?
- A. I've looked at some of the discovery,
- 9 which I think included some of the rules, or
- 10 discussion or amendments to the rules.
- Q. So you would have looked at discovery,
- 12 meaning answers that we provided in this lawsuit
- 13 to questions that your counsel asked on CNS's
- 14 behalf?
- 15 A. That's what I mean.
- 16 Q. Prior to this lawsuit, at any point in
- 17 time had you reviewed any of the Idaho electronic
- 18 filing rules that the Idaho State supreme court
- 19 has adopted?
- 20 A. I don't know. Because prior to filing
- 21 the lawsuit, it seems possible that I would have
- 22 looked at those rules along with our attorneys.
- 23 But I don't have a specific recollection of it.
- 24 Q. As you sit here today, are you aware of
- 25 any Idaho electronic rules that the Idaho Supreme

- 1 filed complaints so that the Big Sky Report can be generated each business day, correct?
- 3 A. It has to do with the timeliness of the
- 4 access, that's correct.
- Q. And tell me what you understand CNS's position to be as to why CNS believes timely
- 7 access is not being provided by the Idaho state 8 courts.
- 9 A. Because it's not -- access is not being
- 10 provided at the time of receipt or shortly
- 11 thereafter like in the federal courts, like in
- 12 three of the four biggest courts -- state courts
- 13 in the U.S., like a bunch of courts in the Ninth
- 14 Circuit such as Arizona and Hawaii. That's why.
- Q. Are you able to answer that question
- 16 without referring to other courts so that you
- 17 could be more specific? Or does your answer need
- 18 to be that broad?

19

- A. I don't understand your question.
- Q. What specifically is your complaint as to 20
- 21 why you believe there's a delay?
- And when I say "you," I obviously mean 22
- 23 CNS, why CNS believes there was a delay in the
- 24 timely access to newly filed complaints in the
- 25 state of Idaho.

Page 40

- 1 Court has adopted related to e-filings?
- A. No. I mean, I've said I looked at
- 3 discovery. I think there were some changes made
- 4 in the security, for example, of -- and there were
- 5 some amendments made, sorry, to the e-filing
- 6 rules. I have looked at those.
- Q. Okay. Well, and what did they tell you?
- 8 What do those e-filing rules say?
- A. My recollection is that -- oh, it had to
- 10 do -- what my recollection has to do with, the
- 11 designation of "Confidential" by a filer, and that
- 12 the filer did have the power to designate a filing
- 13 is confidential. And then that ability was
- 14 amended and taken away by me. That's my
- 15 recollection. And it's -- I'm just saying it's
- 16 vague.
- 17 Q. Okay. Other than that vague
- 18 understanding of e-filing rules that are
- 19 applicable to this case, any other e-filing rules
- 20 that you're aware of?
- 21 A. Specific to Idaho, no.
- 22 Q. Now, this case that we're talking about
- 23 here that CNS has filed in the district court for
- 24 the state of Idaho, this case involves the
- 25 timeliness of reporters having access to newly

- 1 A. Yeah, I think I just answered that
- 2 question, but I'm happy to answer it again.
- 3 I think that the state of Idaho is not
- providing access to the new complaints at the time
- 5 of receipt or shortly after, as many courts do on
- 6 the federal side and the state side.
- 7 Q. And it's CNS's position that Idaho should
- 8 be providing more timely access to newly filed
- complaints, correct?
- 10 A. It's our position that Idaho should be
- 11 providing access at or near the time of receipt.
- 12 Q. That's not my question. My question is
- 13 should Idaho be providing more timely access to
- 14 newly filed complaints? Is that CNS's position?
- 15 A. I'm not sure what you're trying to ask
- 16 because what you mean by "newly filed" -- I'm saying that once they're received or shortly
- 18 thereafter, we should see the new complaints.
- That's how I'm answering your question.
- Q. And when you say "received," do you mean
- 21 that it can be something that has not yet been
- 22 filed?
- 23 MR. FETTERLY: Objection; vague and
- 24 ambiguous as to the term "filed" as used in this
- 25 context. Calls for a legal conclusion.

Page 41

11 (Pages 38 - 41)

(14 of 297), Pagas141.252.97.6080524669763/116/21265.Pkffigtry:21/9.622apeade 2539718

William L Girdner November 9, 2022				
1 2 3 4 5 6	You may answer. THE WITNESS: It's filed when it's submitted. Q. (BY MS. DUKE) Okay. You mean a complaint is filed when it's submitted? A. Correct. That's when	3 4	MR. FETTERLY: Objection; misstates testimony, argumentative. You may answer. THE WITNESS: Yeah, I'm saying it's filed when it's submitted, it's filed. Q. (BY MS. DUKE) And is there anything in	
9 10 11	Q. What is your basis for believing that when a complaint is submitted in the state of Idaho, that it has been filed? A. I think the I have not seen an e-filing rule in the United States, federal or state court, that says a filing time is anything	8 9 10	Idaho, its rules of civil procedure or its electronic filing rules, that supports your belief that when a complaint is submitted, it is filed?	
13 14 15 16	other than when it's submitted. Q. And perfect. I like that. So you're not familiar with any Idaho electronic rule that distinguishes between submitted versus filed, correct? A. I think they're the same.	13 14 15 16	these questions. Ultimately I believe this is an issue that's been argued before the Court, and there's a legal issue involved in it. The witness has provided his answer. Asked and answered.	
19 20 21 22 23	Q. You believe that in the state of Idaho, the e-filing rules state that a submitted complaint is the same as a filed complaint? A. I don't know what you I'm saying that it is filed on the point of submission. That's my understanding.	19 20 21 22 23		
25	Q. Okay. And I'm asking you what that Page 42	l	procedure or its electronic filing rules, that Page 44	
2 3 4 5	understanding is based on in the state of Idaho. MR. FETTERLY: Objection; asked and answered. THE WITNESS: I've seen no other state in the nation, federal or another court in the	2 3 4 5	supports your belief that when a complaint is submitted in Idaho state courts, it is filed? MR. FETTERLY: Objection; calls for a legal conclusion, asked and answered, argumentative.	
7 8 9	nation, federal or state that does not do it that way. That's my reasoning. Q. (BY MS. DUKE) I'm not asking about other courts. I'm not asking about other jurisdictions. I'm asking about the state of Idaho.	8 9	THE WITNESS: What I answered and what I'm saying now is that I've seen no other court, ever, that made a distinction between submitting and filing. And I have not seen anything in Idaho that tells me otherwise.	
13 14	What is your understanding based on in the state of Idaho that a submitted complaint is the same thing as a filed complaint? A. I'm saying when it's filed I'm saying when it's submitted, it's filed. I don't know	14	Q. (BY MS. DUKE) Okay. Thank you. A. You bet. Ms. Duke, do you mind if I get a quick cup of coffee? MS. DUKE: Not at all. Let's go ahead and take a five-, ten-minute break.	
17 18 19 20	what you mean by "filed complaint." Q. I'm asking what your basis is for saying that when it's submitted, it's filed. A. And I'm saying it's because that's the case throughout the courts of this nation. And I don't I have not seen anything that tells me	19 20	THE WITNESS: I appreciate it. Thanks. THE VIDEOGRAPHER: All right. So the time is 10:07 a.m., and we're off the record. (Break taken from 10:07 a.m. to 10:27 a.m.) THE VIDEOGRAPHER: All right. So we are recording. The time is 10:27 a.m., and we are	

Page 43

22 Idaho's different.

Q. So it is CNS's position that the

24 Idaho -- that Idaho has not made a distinction

25 between "submitted" and "filed," correct?

12 (Pages 42 - 45)

Page 45

22 back on the record.

25 anybody?

Q. (BY MS. DUKE) All right. During the

24 break, did you have an opportunity to talk with

(15 of 297), Pagas 151.5297-6080524-6697503/116/21265-Pktfigtry: 21/19928 agade 24 29718

William L Girdner November 9, 2022

6

11

12

14

19

23

22 me.

- 1 A. Yes, I talked with Jon Fetterly.
- 2 Q. All right. Anyone else?
- 3 A. No.
- 4 Q. All right. Tell me what you did to
- 5 prepare for your deposition today.
- 6 A. I read my declaration, and I also read
- 7 the 12(b)(6) notice. And then I -- that's -- I've
- 8 been following the various discovery and filings
- 9 as we go along, but specifically for this
- 10 deposition, I looked over my declaration and the
- 11 12(b)(6) notice.
- 12 Q. The 30(b)(6)?
- 13 A. I'm sorry. Sorry, yes.
- 14 Q. All right. And the declaration that
- 15 you're referring to is the declaration that was
- 16 filed on CNS's behalf on November 15 of 2021?
- 17 A. Yeah. I don't have it in front of me,
- 18 but I think there's been only one that I've filed
- 19 in this case, so that would be it.
- Q. I actually have a supplemental as well
- 21 that was January 24, 2022. And I'll pop those up 22 later.

1 reading the 30(b)(6) notice, no other documents

A. Yeah, not specifically. As I say, I've

Q. Sure. And you understand -- certainly

You understand that a 30(b)(6) witness

2 that you reviewed to prepare for today's depo?

8 means that you've been designated by CNS to

9 testify and bind CNS as to answers that you're

23 A. Okay.

3

5

- Q. But other than that declaration or both
- 25 of those declarations, no other -- and of course

4 been keeping abreast of the litigation.

6 you're a lawyer, so that helps.

11 were identified in the notice?

Daga 16

1 A. I think that's right. I think, yes, that

25 together prior to her starting at CNS?

Q. Okay. Did you talk with anyone at all to

2 prepare for your deposition other than counsel so

4 would be to any of the 30(b)(6) topics?

A. No. I'm trying to think. No.

3 that you could better understand what your answers

Q. And so after reviewing the topics, you

MS. DUKE: We'll mark as Exhibit 25 the

(Deposition Exhibit No. 25 was marked.)

Q. (BY MS. DUKE) All right. Let me chat

16 with you about the CNS Daily Reports Style Manual.

Who put that style manual together?

A. Chris Marshall is primarily responsible.

17 Ms. Valenti testified to this yesterday. It was

21 I call him the editor. But he discussed it with

Q. And it's my understanding from

24 Ms. Valenti's testimony that Exhibit 21 was put

7 felt that you had the information and knowledge

8 necessary to be able to provide full, complete

9 answers to items 1 through 28 of the 30(b)(6)

10 notice on CNS's behalf?

A. Yes.

13 30(b)(6) notice.

18 Exhibit 21.

- 2 sounds right.
- 3 Q. And that it has not been updated or
 - 4 changed since?
 - 5 A. Yeah, that's what I'm -- I'm not sure
 - 6 about that. I tried to check on that yesterday,
 - 7 but I didn't get an answer.
 - 8 Q. Okay. If you do get an answer today, if
 - 9 you let me know, that would be great.
- 10 providing in today's deposition on the topics that 10 A. Absolutely, yeah. I can tell you if
 - 11 there have been any changes, they've been very 12 minor.

14 comply with the CNS Daily Reports Style Manual,

- 12 A. I do. I'm a nonpracticing lawyer. I 12 minor.
 13 haven't practiced in, oh, my gosh, three decades. 13 Q. And Ms. Valenti is expected to follow and
- 14 Q. It's been a while?
- 15 A. Yeah. Yeah.
- 16 Q. But that aside, you certainly have the
- 17 understanding as a 30(b)(6) deponent that you've 17
- 18 been designated by CNS and that your testimony
- 19 binds CNS as to the topics that you were
- 20 identified to testify to, correct?
- 21 A. Correct.
- Q. And you were identified to testify as to
- 23 all of the topics that were identified in the
- 24 30(b)(6) notice?
- 25 A. Correct.

- 15 correct? 16 A. Yes.
- 17 Q. And that manual identifies certain types
- 18 of cases that she is to report on?
- 19 A. Yes.
- 20 Q. And by "report on," I mean to include in
- 21 the Big Sky Report.
- A. Correct.
- Q. Give me a summary of what those types of
- 24 cases are.
- 25 A. Sure. I mean, the style manual lays them

Page 49

Page 48

13 (Pages 46 - 49)

(16 of 297), Pagas 161.95297-6080524069363/116/2025-Pktfiptry:2195922apa 16 95 397.18

William L Girdner November 9, 2022

- 1 out, but off the top of my head, having done
- 2 reports myself, fraud cases, defamation,
- 3 environmental cases would be at the top. A major
- 4 tort case.
- Q. Why not, for instance, criminal filings? 5
- A. Well, I heard that question yesterday.
- 7 We are focused on civil litigation. That's our
- 8 inspiration at Courthouse News is that lawyers,
- 9 and actually the public as well, had a great
- 10 interest in seeing what the civil business of the
- 11 courthouse was, and that the civil -- there's a
- 12 lot more civil cases than criminal cases. And the
- 13 civil cases tend to be ignored or not covered as
- 14 well is how I should say it.
- But I have asked our reporters to stay in 15
- 16 touch with the U.S. Attorney's Office and get
- 17 their announcements and indictments and things
- 18 like that.
- 19 Q. And is that the case here in Idaho?
- 20 A. I don't recall specifically. It would be
- 21 my general practice, but I do not know
- 22 specifically with Cathy. And then, you know, it's
- 23 not -- there's 240 people. I have bureau chiefs,
- 24 and I don't talk to each individual reporter.
- 25 Q. Do you know if anyone in Idaho has asked

- 1 indictment. But that's just general.
- 2 Q. Why has CNS determined that its reporters
- 3 should only focus in on non-individual civil
- 4 filings unless the individuals are high profile
- 5 or, you know, stars, that type of thing?
- A. Sure. Sure. I thought they were the
- 7 ones of consequence. That's why.
- Q. What is your understanding of the
- 9 complaints that are issued -- or at issue in this
- 10 case that CNS believes it is not receiving timely
- 11 access to once filed?
- 12 A. General civil cases, the general civil
- 13 litigation.
- 14 Q. Beyond calling it general civil
- 15 litigation cases, are you able to refine it in any
- 16 other way than that?
- A. Every court has a kind of -- its own 17
- 18 unique breakdown of case categories and case
- 19 definitions. I'm not familiar with the particular
- 20 case definitions in Idaho, but I did see in the
- 21 discovery a list of -- I believe they were file
- 22 codes of different case types.
- 23 Q. And is it your understanding that in the
- 24 discovery of the list of file types, that those
- 25 are the complaints that CNS believes are at issue

- 1 to stay in contact with the U.S. Attorney's Office
- 2 as to indictments, those types of things?
- 3 A. I don't.
- Q. Have you asked anyone in the state of
- 5 Idaho to talk with the U.S. Attorney's Office
- 6 about indictments they're thinking about doing or
- 7 instead just indictments that they actually go
- 8 forward with?
- A. I don't quite understand your question,
- 10 but I haven't talked to -- I can't remember asking
- 11 anybody to stay in touch with the U.S. Attorney's
- 12 Office, which I think covers your question.
- 13 Q. Okay. Well, what I'm asking is there's
- 14 obviously a lot that goes into actually going
- 15 forward and filing an official indictment.
- You understand that? 16
- 17 A. Of course.
- 18 Q. Have you asked anyone across the country
- 19 to be in touch with U.S. Attorney's Offices about
- 20 indictments they're considering filing?
- 21 A. No. I'm just -- the reason I want to
- 22 answer your question fully, or carefully, as I'm
- 23 doing with all of these, is that U.S. attorneys, I
- 24 think, will announce investigations, as I recall.
- 25 And so I think an investigation can come before an Page 51

- 1 in this lawsuit?
- 2 A. No.

5

- 3 MR. FETTERLY: Objection; vague and
- 4 ambiguous, overbroad.

THE WITNESS: It's very broad. There's a

- 6 lot of different categories. So we're looking for
- 7 the public cases.
- Q. (BY MS. DUKE) Well, and what I mean by
- 9 that, have you seen some documents that talk about
- 10 filing fee categories in a chart?
- A. Yes. 11
- 12 Q. All right. And why don't I go ahead and
- 13 share --
- 14 A. I'm sorry. "Filing fee categories," did
- 15 you say?
- 16 Q. Correct.
- A. No. I've just seen the chart of all the 17
- 18 different -- I think they're file codes, but I did
- 19 not see -- I don't recall that those were tied to
- 20 fees, but they may have been.
- 21 Q. Okay. Let me share my screen and see if
- 22 maybe we're talking about the same thing.
- 23 A. Yeah.
- 24 Q. All right. Can you see that?
- 25 A. Yes, I can.

Page 53

14 (Pages 50 - 53)

William L Girdner November 9, 2022

- 1 Q. I can make it bigger too, if that helps.
- 2 A. I get the idea. I don't think -- yeah, I
- 3 don't think this is what I saw.
- 4 Q. All right. If your counsel were to have
- 5 represented on CNS's behalf that this lawsuit is
- 6 only involving these items in AA1 through 6, do
- 7 you have any reason to dispute that?
- 8 A. No. And I have seen this. I have seen
- 9 this. It's coming back to me. Because I remember
- 10 the number, those letters, A.A.1., yeah.
- 11 Q. All right. So if you look at those, can
- 12 you see that okay?
- 13 A. I can.
- 14 Q. I can blow it up here a bit too so it's
- 15 easier. Is that better?
- 16 A. Yes.
- 17 Q. All right. So it says "Fee Category
- 18 A.A."
- MS. DUKE: And I'll mark this, by the
- 20 way, as Exhibit 26.
- 21 (Deposition Exhibit No. 26 was marked.)
- Q. (BY MS. DUKE) "All initial civil case
- 23 filings in district of any type not listed in
- 24 Categories E, F, and H(1)."
- 25 And then it lists 1 through 6 as

1 Q. All right. Well, here's the magistrate 2 court filings.

- 3 A. No, we would not be interested in those.
- 4 Q. Divorce?
- 5 A. No, certainly not. Guardianship, no.
- 6 Q. Small claims?
- 7 A. No.
- 8 O. Administration of small estates?
- 9 A. No.
- 10 Q. Petition for release from common-law
- 11 lien?
- 12 A. No.
- 13 Q. Petition for entry of judgment on
- 14 workers' comp award?
- 15 A. No.
- 16 Q. How about guardianships,
- 17 conservatorships, or joint petitions for
- 18 guardianship/conservatorship?
- 19 A. No.
- 20 Q. Anything related to, you know, those
- 21 types of things?
- A. No. I'm doing my best to give you the
- 23 broad strokes, but it's general civil litigation.
- We're not interested in probate or the
- 25 various categories -- or family law, the various

Page 54

- 1 creditor, debtor, collections, breach of contract,
- 2 employment dispute, real property, medical
- 3 malpractice, personal injury.
- 4 Is it your understanding that these
- 5 categories I've just read off are the only
- 6 complaints that are at issue in this lawsuit?
- 7 MR. FETTERLY: Objection; vague and
- 8 ambiguous, overbroad.9 You may answer.
- 10 Lacks foundation.
- 11 You may answer.
- 12 THE WITNESS: I don't know what you're
- 13 referring to, the document you're referring to. I
- 14 would describe this as general civil litigation.
- 15 So normally that would be the category of cases
- 16 we're after -- we're looking for to review. But I
- 17 don't know all the other categories, so it's hard
- 18 for me to say with clarity.
- 19 Q. (BY MS. DUKE) Well, when you look at the
- 20 categories identified here 1 through 6, are there
- 21 any others that you understand are at issue in
- 22 this lawsuit?
- A. I don't know the rest of the list.
- 24 Q. Okay.
- A. So it's hard for me to confirm.

- 1 categories you've been listing here.
- 2 Q. And then also when you list case filings
- 3 with no fee, these are petitions for
- 4 sterilization, abortion petitions, post-conviction
- 5 act proceedings, stipulation for entry of
- 6 judgment, court-initiated contempt.
- 7 Are those at all an issue in this case?
- 8 A. No.
- 9 Q. And then of course you said no magistrate
- 10 claims, correct?
- 11 A. Correct.
- 12 Q. And no trust estates, that type of thing?
- 13 A. No. So I'm satisfied that what we're
- 14 talking about is category A.A.1.
- 15 Q. All right. A.A.1. through 6?
- 16 A. Yes. Yeah. Thanks for taking the time.
- 17 Q. No, it's okay. It's important to be on
- 18 the same page.
- 19 So if CNS were to determine that -- I
- 20 understand -- well, strike that.
- I understand that we're only talking in
- 22 this case about the A.A.1. through 6 as we've just
- 23 described in Exhibit 26, correct?
- A. Correct.
- 25 Q. Now, if CNS were to determine at some

Page 57

15 (Pages 54 - 57)

(18 of 297), Pagas 1819 297, 6080 524 069 B. William Pkthetry: 219512 2 apage of 397.18

William L Girdner November 9, 2022

- 1 later date that it, in fact, wanted to report on
- 2 magistrate cases in the state of Idaho, and the
- 3 Idaho courts were following the same process they
- 4 currently are following with respect to access to
- 5 those types of complaints or initial pleadings
- 6 that initiate a case, would it be your position
- 7 that the First Amendment concerns that you are
- 8 raising in this lawsuit would apply to those as
- 9 well?
- 10 MR. FETTERLY: Objection; vague and
- 11 ambiguous, overbroad, calls for a legal
- 12 conclusion, lacks foundation.
- 13 THE WITNESS: Yeah, that's really
- 14 hypothetical. Best I can say is I don't know. We
- 15 normally are not interested in magistrate cases,
- 16 and I don't see that becoming -- that changing.
- 17 I've been running this business for over 30 years.
- 18 I don't see that as likely to happen.
- 19 I understand that wasn't your question.
- 20 If it's a public filing, it should be -- anyway.
- 21 I don't know is the best I can tell you.
- 22 Q. (BY MS. DUKE) Well, I think what you're
- 23 about to say, if it's a public filing, it should
- 24 be subject to the same scrutiny that these cases
- 25 A.A.1. through 6 are subject to; is that fair?

- 1 Kootenai's paper filings, any reason to dispute what Ms. Valenti testified to is what she believed
- that process was?
- 4 A. No.
- 5 Q. And does Ms. Hennemen still work for you 6 all?
- 7 A. No.

13

- 8 Q. All right. Anybody else responsible in
- the state of Idaho for CNS Big Sky Reports other
- 10 than these folks you've talked about?
- A. There's the bureau chiefs who hires,
- 12 Chris Marshall, and he's been to Boise.
 - Q. What is the role of a bureau chief?
- 14 A. We have five bureau chiefs at Courthouse
- 15 News. They are -- I guess you'd call them the
- 16 field operators. They're responsible for the
- 17 coverage, for hiring reporters, for managing them.
 - Q. What cost does CNS incur in connection
- with reporting on civil complaints in
- 20 jurisdictions that have not implemented
- 21 Auto-Accept or the press review queue?
- 22 A. I think the costs are the same, but I'll
- 23 try to make the distinction for you. Actually, if
- 24 you don't mind, I'll talk about the cost --
- 25 Q. Sure. Page 58

Page 60

- 1 A. I think that's where I was going. I mean
- 2 that is where I was going.
- Q. So with respect to the reporters that
- 4 have been employed in Idaho, I know that we talked
- 5 about a gentleman this morning, Phil Janquart.
- A. Correct. 6
- 7 Q. Other than Phil Janquart and then
- 8 Ms. Valenti, have there been any other
- 9 Idaho-specific reporters that you're aware of
- 10 employed here in Idaho?
- A. No. It's -- and I just want to make 11
- 12 sure, it's Janquart, J-a-n-q-u-a-r-t, I believe.
- 13 As far as I know, no. Just Cathy and
- 14 then Carson as you saw yesterday, does some
- 15 substitution.
- 16 Q. And he -- as I understand it, Carson
- 17 fills in when Cathy's on vacation, sick leave,
- 18 that type of thing?
- 19 A. Yeah. And there was one other. Jamie
- 20 Hennemen, as you correctly surmised, was based in
- 21 Spokane. And then she would go across and report
- 22 on Kootenai in the paper list.
- Q. And any reason to believe that
- 24 Ms. Valenti's description of what she understood
- 25 Ms. Hennemen's process to be in reviewing

- A. -- and then I don't know if I can make 1
- 2 the distinction between the two that you're
- 3 talking about.
- 4 Q. Sounds good.
- 5 A. Okay. The cost would be labor,
- 6 obviously.
- 7 And then in various jurisdictions there's
- subscription costs for online access, for remote
- access. That seems to be the model that is
- emerging, much like the federal court. And so
- those subscription costs and then costs for
- 12 individual documents.
- 13 There's other things, you know, like
- 14 internet costs and computer costs and all that
- 15 kind of stuff.
- Q. Sure. And I understand from your 16
- 17 declaration, it sounds like there are 51
- 18 subscribing institutions, or at least there were
- 19 as of November 15, 2022, in the state of Idaho?
- 20 A. Sorry. Yes, I don't think that's
- 21 changed. That's correct.
- 22 Q. And when you say a "subscribing
- 23 institution," what do you mean by that?
- 24 A. Yeah, it would be like a law firm, a law
- 25 school, a newspaper, TV station as opposed to an

Page 61

16 (Pages 58 - 61)

William L Girdner November 9, 2022

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9 the case filings?

- 1 individual.
- Q. And the only folks that have access to
- 3 the Big Sky Report are the subscribing
- 4 institutions, correct?
- A. Yes, that would be correct. Yes.
- 6 Q. I'll represent my firm is a subscribing
- 7 institution and so I get -- what was that?
- A. I suspected as much.
- 9 Q. Yes. And so I get a report each day,
- 10 each business day, as to what's been filed.
- 11 When you --
- 12 A. Thank you for your subscription.
- 13 Q. Yes. You are very welcome. Very
- 14 welcome.
- 15 So there's 51 total subscribers for the
- 16 Big Sky Report, which includes Idaho, Wyoming, and
- 17 Montana, right?
- 18 A. Yes, that's right.
- 19 Q. The 51 wasn't just limited to Idaho
- 20 subscription posts?
- 21 A. No, it was not. Sorry.
- 22 Q. And so the subscription costs that you're
- 23 talking about for CNS are obviously we pay a fee
- 24 to CNS so that we can have the subscription?
- 25 A. Right.

1

- Page 62
- O. And then if we want to do the CNS 2 download and get a copy of one of the complaints,
- 3 then we pay a fee for that copy?
- 4 A. Correct.
- 5 Q. What about the costs on CNS's end? So if
- 6 the press review queue was used in the state of
- 7 Idaho, would you have a need for a local reporter
- 8 anymore?
- A. I would -- I'd say yes, we want a local
- 10 reporter. There's more flexibility. We can cover
- 11 the state remotely, but I prefer to have a
- 12 reporter at the courthouse.
- Q. But if press review queue was initiated,
- 14 it would be possible to not have a reporter at the
- 15 courthouse and instead to just do it remotely,
- 16 correct?
- 17 A. It would be possible, yes.
- 18 Q. And if Auto-Accept were initiated in the
- 19 state of Idaho for state court filings, would
- 20 there still be a need for a local reporter, or
- 21 could all of that be accessed online?
- A. It's a different issue. The
- 23 Auto-Accept -- it depends. Auto-Accept is
- 24 independent of where you get access.
- 25 So, for example, let's say you had

21 it to state courts, and then we can move to

1 Auto-Accept in Idaho but you had limited access to

2 the kiosk. Well, we would still have to have

3 Ms. Valenti go to the courthouse and use the

7 need to have her go to the courthouse, but

4 kiosk, regardless of whether it's Auto-Accept or

Q. Press review queue would eliminate that

8 Auto-Accept she would still need to go and review

A. Yeah. And let me explain that as well.

11 There are some press review queues, for example in

12 Georgia, that are based at the courthouse. And I

So it's the same dilemma as with

is made available. If it's remote, yes, you're

18 kiosk, then, no, we have to have somebody there.

Q. With respect to the press review

20 queues -- well, how many states -- and I'll limit

17 correct. But if it's based on locally at the

15 Auto-Accept. It just depends on where the access

13 don't know if they're remote as well.

- 22 federal courts if that's different. So just to
- 23 try to break it into the two different court
- 24 systems.
- 25 A. Yeah.

Page 64

- Q. With respect to state courts, how
- 2 many -- as a result of CNS's lawsuits, how many
- state courts have gone to a press review queue?
- 4 MR. FETTERLY: Objection; vague and
- ambiguous and overbroad.
- 6 Are you asking only with respect to
- 7 lawsuits, or press review queues in general? I
- just want to make sure we're clear on the
- 9 question.
- 10 MS. DUKE: Starting with lawsuits.
- 11 THE WITNESS: Yeah, I was going along the
- 12 same lines. In other words, some courts have
- 13 given us press review based on request. So if I
- 14 could modify -- if I could modify based on
- 15 requests or lawsuits -- I don't know if that's
- 16 satisfactory to you -- but then I can run through
- 17 the press review queues.
- 18 Q. (BY MS. DUKE) Why don't you run through
- 19 them. That's probably the --
- 20 A. Yeah. I'll start with the easy ones.
- 21 Q. Sure.
- 22 A. Georgia, I believe we have -- I believe
- 23 it's eight review queues in and around Atlanta,
- 24 but they're not all Tyler. There's a mix of
- 25 courts there. It's just a remarkable jumble of

Page 65

17 (Pages 62 - 65)

(20 of 297), Pagas201.25227.6888524C969363/196/2025.-Pk4Filetry:2195922apa3202537118

William L Girdner November 9, 2022

- 1 courts and vendors and, actually, amazingly
- 2 enough, e-file managers.
- 3 Fulton County has three different
- 4 vendors, which each have their own e-file manager,
- 5 which I've never seen anywhere else.
- Then we have one press review queue in
- 7 Austin which was the result of litigation and a
- 8 settlement.
- 9 We have a -- first, a press review queue
- 10 and now Auto-Accept through Tyler in Las Vegas,
- 11 which was always -- it was based on a request.
- 12 Okay? No lawsuit there.
- 13 And then in California, I'll go through
- 14 the Tyler. Do you want to go through the Tyler
- 15 ones first?
- 16 Q. Yeah. Why don't we do that.
- A. Okay. So for Tyler in California --17
- 18 there's a lot, so I'm going to do my best based on
- 19 my --

1

- 20 Q. Sure.
- 21 A. Kern County, based on a request.
- 22 Fresno, based on a request.
- 23 Santa Barbara on a request.
- 24 Monterey, based on a request.
- 25 San Luis Obispo, based on a request.

Page 66

19

And then -- oh, yeah, Sonoma, San Mateo

- 2 and Santa Cruz based on a request. I'm sorry.
- 3 Sorry, sorry. Based on litigation.
- 4 Q. Sonoma, Santa Cruz -- and what was the
- 5 other one?
- A. San Mateo. 6
- 7 Q. San Mateo.
- 8 A. Yeah. And then I'm going to go through
- 9 some eastern county -- eastern district courts
- 10 that are small. I'll do my best.
- 11 Q. Sure.
- A. These courts have agreed to install press 12
- 13 review queues within five months. They're Merced,
- 14 Yolo, Sutter, Yuba, Butte, and Stanislaus and
- 15 Kings had already -- there was -- I believe they
- 16 were named as defendants, but they settled out
- 17 early.
- 18 Q. Okay.
- 19 A. I think that covers the territory.
- 20 Q. All right.
- A. Now, there's other -- the equivalent of 21
- 22 press review queue in -- by other vendors in
- 23 California.
- 24 Q. Okay. So what you've provided me are
- 25 Tyler press review queues with the caveat that in

1 Georgia it sounds like it's a whole mish-mash of different providers?

- 3 A. Yes, correct.
- 4 Q. All right. So for the non Tyler
- 5 products --
- 6 A. Okay.
- 7 Q. Why don't you run through that list.
- 8 A. Yeah.
- 9 Q. Similar press review or an Auto-Accept.
- 10 A. Yeah. So -- oh, you want me to put
- 11 Auto-Accept?
- 12 Q. Sure.
- 13 A. Okay. I'm going to take you around the
- 14 country, so it's going to take a while. Are you
- 15 all right with that?
- 16 Q. Let's go around the country. And if
- 17 you'll do it so that I've been everywhere, then
- you'll really get bonus points.
 - A. I'll do my best.
- 20 Okay. So Vermont, we have Auto-Accept
- 21 statewide at the courthouse.
- 22 Q. With or without litigation?
- 23 A. With litigation, certainly.
- 24 Q. Okay.
- 25 A. Litigation and a decision by Judge Rice.

Page 68

- 1 In Connecticut, Auto-Accept without
- 2 litigation.
- 3 In New York, statewide public review
- 4 queue. By that I mean that the cases have come
- 5 into the court; they don't have a permanent case
- 6 number yet, but they are publicly available. Not
- 7 simply -- not limited by registration to the press
- 8 or any other entity.
- 9 All right.
- 10 Q. And that was not with litigation?
- A. That was with litigation. 11
- 12 Q. That was with?
- 13 A. Yes.
- 14 Q. Okay.
- 15 A. It was with an injunction. Now, the
- 16 injunction was limited to Manhattan, the New York
- 17 Supreme Court, but then voluntarily was extended
- 18 throughout the state.
- 19 All right. Going south -- and I'm
- 20 leaving out the federal courts which are virtually
- 21 all Auto-Accept. Okay?
- 22 Q. Yep. Yep.
- 23 A. So then we get down to Georgia. And as I
- 24 mentioned, there's eight different courts. I
- 25 think I'm right on that. It's close. And they

Page 69

18 (Pages 66 - 69)

(21 of 297), Pagas211.05297.6086524069763/A6/AP65.7PkHatry:2195928apa31 26 39718

William L Girdner November 9, 2022

- 1 include Peach Court, Tyler, and it's a company 2 called File & Serve Express.
- 3 So just a quick illustrative example in
- 4 Fulton County, which is Atlanta itself, all three
- 5 File & Serve Express, Peach Court, and Tyler are
- 6 vendors, so they're court e-filing vendors and
- 7 they also run their own e-file managers. Through
- 8 all three we have access on receipt. So a press
- 9 review queue.
- 10 Q. Press review, okay.
- 11 A. Going down to Florida, we have
- 12 statewide -- it's a statewide review queue just
- 13 recently put in place about a week and a half ago.
- 14 And it's -- you have to have a role, but the media
- 15 is one role that -- to get access at the time of
- 15 is one role that -- to get access at the time of 16 receipt.
- 17 So it's pretty -- it's somewhere in the
- 18 middle between review -- a press review queue and
- 19 a public review queue. I've looked at the roles
- 20 quickly, and I think a member of the public could
- 21 qualify. But I haven't gone into it further.
- 22 All right. In Alabama, statewide upon
- 23 receipt through OLIS. And -- sorry. Statewide
- 24 Auto-Accept through OLIS.
- Q. How do you spell "OLIS"?

1 it a press review queue. It's called the News

- 2 Media Portal.
- And by the way, I'm leaving out all the 4 fees and everything else. So a number of these
- 5 are not free and not nearly free.
- 6 Q. Sure.
- 7 A. Jumping out to Hawaii, Auto-Accept,
- 8 statewide, free at the courthouse. I think it's
- 9 something like 300 a year remote. I'm not sure.
- 10 There's a fee for remote.
- 11 Then coming back to --
- 12 Q. Was that with litigation or no?
- 13 A. No, no litigation. There's a tradition
- 14 there of statewide access that's really quite
- 15 remarkable -- that's really remarkable.
- 16 Q. Okay.
- 17 A. In California, so from -- going up the
- 18 state from the bottom to the top, start with
- 19 Imperial County. That's a press review -- that's,
- 20 sorry, a public review queue put in place by
- 21 Journal Technologies, which is based in
- 22 California. And it's open to the public. No
- 23 registration. Wide open.
- Then San Diego County is homegrown.
- 25 There was a very expensive attempt to put a

Page '

- A. O-L-I-S. It's, I think, Online
- 2 Information Systems.

1

- 3 Q. And just if you could just remember to
- 4 say if they were with or without litigation.
- 5 A. Oh, yeah. Florida was with litigation.
- 6 Georgia was not.
- 7 And then Alabama is not, I think I said.
- 8 And then keep going through across the
- 9 south, Texas. There's the administrative office
- 10 has signed an agreement with -- and paid, as I
- 11 understand it, with an agreement with Tyler for a
- 12 statewide press review queue. But only Austin has
- 13 implemented it.
- 14 Q. And that was through litigation?
- 15 A. Yes. And there's still litigation
- 16 pending there.
- 17 Q. And that's related to the remainder of
- 18 the state?
- 19 A. Yeah. It's on hiatus because there's
- 20 currently a review of policy going on.
- 21 And then moving west -- yeah. I'm going
- 22 in circles right now.
- Q. No worries.
- A. Arizona, the vendor is Granicus, no
- 25 litigation, a request. Statewide. I would call

- 1 statewide case management system and e-filing
- 2 system in place about ten years ago. San Diego
- 3 was one of the testers of that, and then went on
- 4 its own and modified the software that was
- 5 developed at that time. Anyway, that's a press
- 6 review queue but through this homegrown system.
- Q. And were Imperial or San Diego the result
- 8 of litigation or just voluntary after a request?
- 9 A. Both voluntary. Not even a request.
- 10 Q. Not even a request?
- 11 A. Oh, sorry. Sorry. Sorry. In Imperial,
- 12 yes, there was a request. Yes, there was. And
- 13 same in San Diego.
- 14 Q. Okay.
- 15 A. Orange County, brother to San Diego in
- 16 the sense of the old CCMS system was adapted. And
- 17 based on extensive, years-long litigation.
- 18 Q. So they have kind of a homegrown press
- 19 review queue?
- 20 A. Yes. I would say that.
- 21 Q. Okay.
- 22 A. Then you go eastward to Riverside County,
- 23 2.5 million people, huge county, but not very
- 24 famous. They have, through Journal Technologies,
- 25 a public review queue, meaning that the cases

Page 73

Page 71

Page 70

19 (Pages 70 - 73)

1

- 1 don't have case numbers, processing has not been
- 2 completed, but it's a site that's open to the
- 3 public for review.
- 4 You go to LA, the big kahuna, 10 million
- 5 people, huge court, the biggest court in the
- 6 nation. Journal Technologies, they have something
- 7 called a media access portal, subscription-based,
- 8 no litigation. Voluntary.
- 9 Sorry, Riverside was also voluntary based
- 10 on a request.
- 11 Q. Okay.
- 12 A. Okay. And Los Angeles based on request.
- 13 So then you go to -- so moving north,
- 14 I've mentioned Santa Barbara. Ventura, that's the
- 15 planet case. That's a -- I would call that a
- 16 review queue, but it's public.
- They're scanning -- there's so many 17
- 18 variations, that's kind of one of my points here.
- 19 They're scanning paper filings as they come in and
- 20 putting them online for public review without
- 21 requiring registration.
- 22 Then let's see. All right. So
- 23 Sacramento -- Sacramento's paper. We see the
- 24 access on receipt old school, but that's not a
- 25 press review queue.

Page 74

- 1 So let me keep going with review queues.
- 2 San Francisco is a -- the press review queue, but
- 3 it's based at the courthouse and it's through the
- 4 court's wifi.
- 5 Q. Was that litigation or --
- A. No. No. Request. Placer County is
- 7 Journal Technologies, based on a request. That's
- 8 a press review queue -- sorry, public review
- 9 queue.
- 10 Alameda, also Journal Technologies press
- 11 review queue based on registration.
- 12 So I don't know if -- I'm assuming
- 13 Alameda would allow anyone to subscribe if they
- 14 paid the subscriber fee, so I'm just not specific
- 15 on that part of it.
- 16 And then I think I left one Tyler court,
- 17 which is -- it's this beautiful county north of
- 18 San Francisco. I've forgotten. It will come back
- 19 to me.
- 20 Q. Okay.
- 21 I'm trying to think if there are any
- 22 others. I think that's it. Give me just a minute
- 23 to think about it for just a second.
- 24 Q. Yeah, no problem.
- 25 A. California, yeah. Yeah. Okay.

And then there's -- Utah is Auto-Accept.

- 2 Q. Was that litigation or --
- 3 A. No, no litigation. A request.
- 4 Q. Okay. How about Oregon?
- A. Oregon, of course there's litigation
- 6 ongoing right now. So there's no press review
- queue there. And it's not Auto-Accept.
- Oh, but that reminds me. Good. Up in
- Washington, Tacoma is an Auto-Accept court. So
- 10 that's Pierce County Superior Court.
- 11 Q. And litigation or --
- A. King County was Auto-Accept and they took 12
- 13 it back, so it's now post-processing.
- 14 Q. So and is there a lawsuit with King
- 15 County?
- 16 A. No. And I'm trying to kind of swing
- 17 around back towards the middle of the country.
- Q. Sure. And real quick, so King County was 18
- 19 Auto-Accept and now they are not and now they're
- 20 post-processing?
- 21 A. Yeah. Let me see if I can say this
- 22 correctly.
- 23 I don't know if they were actually
- 24 Auto-Accept. I know we could see the cases --
- 25 okay? -- as they came in. But it was complicated.

- 1 You had to use a wild card digit at the end, zero
- 2 through nine. So if we're going up in the
- 3 numbers, you'd have to check the numbers, but
- 4 you'd have to check ten times or up to ten times
- 5 for each number.
- Q. Okay. 6
- 7 A. And then they changed the online system
- 8 so that now it's delayed.
- And let me swing eastward, just back
- 10 eastward a bit. I'm not thinking of any other
- 11 Auto-Accept state courts.
- Q. So that's all? Okay. And then what
- 13 about press review queues? Any others to add?
- 14 A. No, I think those are the ones I can
- 15 think of.
- Q. Okay. So obviously there's a lot of
- 17 states we haven't talked about, Minnesota,
- 18 Montana, Wyoming, Iowa, Illinois, Tennessee, a lot
- 19 of those middle states.
- 20 Are there lawsuits at all right now in
- 21 those jurisdictions?
- 22 A. Oh, let me give you just a bit of
- 23 context.
- 24 Q. Sure.
- 25 A. Because this geography is so varied.

Page 77

20 (Pages 74 - 77)

(23 of 297), Pagas231.052.27.6086524.66976.03/A6/2025.-Pktfletry:2195928apa232527118

William L Girdner November 9, 2022

- 1 Q. Yeah.
- 2 A. A lot of those courts are still paper.
- 3 Q. Okay.
- 4 A. We should not assume that these are all
- 5 e-filing courts, because they're not. And a lot
- 6 of them are mixed paper and voluntary e-filing.
- 7 Q. Okay. Got it. Thanks for that list.
- 8 So that covers any press review queue,
- 9 whether through Tyler or through a different
- 10 entity or self-made, and whether it's a public
- 11 press review queue or public review queue or a
- 12 press review queue?
- 13 A. Right, plus Auto-Accept.
- 14 Q. Plus Auto-Accept. Okay.
- What cases is CNS currently litigating?
- 16 Obviously Oregon and Idaho.
- 17 A. Right. There's -- Texas is pending. New
- 18 Mexico is pending. Missouri is pending.
- 19 Q. And what are the systems -- sorry. Any 20 others?
- A. Yeah. Yeah. New York. I mean, sorry,
- 22 Vermont is pending in the second circuit. Did you
- 23 ask for any pending litigation?
- 24 Q. Correct.
- 25 A. Yeah, so in Maryland, there's -- at the

1 A. Yeah.

- 2 Q. And only providing post-processing newly
- 3 filed complaints to, it sounds like, attorneys?
- 4 And attorneys can access any case and there's not
- 5 such access being provided to the public or press?
- 6 A. Correct.
- 7 Q. How about Missouri? Is that paper?
- 8 A. No. That's e-filing.
- 9 Q. Right. And tell me what the circumstance
- 10 is there.
- 11 A. Sure. The courts are delaying access
- 12 between a day -- from a day to a week for
- 13 processing. We've challenged that. It's -- the
- 14 judge at the district court level ruled that he
- 15 should abstain, and then the Eighth Circuit
- 13 should abstain, and then the Lighth Circuit
- 16 reversed him fairly recently. So we're now
- 17 pending back in front of the same district court 18 judge.
- 19 Q. And what's the process there by which
- 20 complaints are, you know, I guess passed over the
- 21 e-counter and then ultimately filed?
- 22 A. Right. You know, I don't know if I'm
- 23 treading on toes here. But for me it's a fairly
- 24 common process. In other words, the filer submits
- 25 an e-filing. It goes into the EFM. And there,

Page 78

Page 80

- 1 district court level there's a case ongoing. And
- 2 then in Virginia there's a case ongoing also.
- 3 Q. So in Virginia, is that a state court
- 4 case?
- 5 A. Yeah. It's really -- it's a different
- 6 issue. It's -- the courts are providing online
- 7 access to lawyers but not to journalists or
- 8 members of the public.
- 9 And to be clear, it's not just their own
- 10 cases that the lawyers have access to. It's all
- 11 the cases.
- 12 Q. And do you know how -- like, are those
- 13 cases that have already had the complaints filed?
- 14 Or do you know what the circumstance is there in
- 15 Virginia?
- 16 A. Post-processing. I'm sorry. Can I add
- 17 one thing?
- 18 Q. Sure.
- 19 A. It's paper. It's amazing. The whole
- 20 state is paper with -- there's optional e-filing,
- 21 but it's only, like, 16 percent in Norfolk, and
- 22 that's the biggest state -- the biggest county
- 23 that's using e-filing. So we're talking about
- 24 paper.
- Q. All right. So Virginia is paper?

- 1 the clerk reviews and processes the case. I
- 2 think, to use your terminology, accepts it, and
- 3 then it goes into the docket, the public docket.
- 4 So it's the same basic process.
- 5 Q. Is it Tyler?
- 6 A. No. Let me think. No, it's homegrown.
- 7 Q. And do you know if it's homegrown as in
- 8 there's a file and serve program and then there's
- 9 a separate case management program, you know, or 10 court file program?
- 11 A. I understand the distinction, but it's
- 12 homegrown all the way, meaning the e-filing
- 13 component and the case management component are
- 14 all handled by the state.
- 15 Q. Okay. And how about Maryland?
- 16 A. Maryland's Tyler. And by the way,
- 17 Vermont is too. I think you know, but --
- 18 Q. Sure. And does Maryland have Tyler's
- 19 File & Serve?
- 20 A. Yes.
- Q. And then do they have a Tyler case
- 22 management product or a different case management
- 23 product?
- A. No, top to bottom, the whole way.
- Q. Is all Tyler?

Page 81

21 (Pages 78 - 81)

(24 of 297), Pagas241.952.97.6080524.06976.03(A6/AP65.+PkHatry:219592.8apa24.2539118

William L Girdner November 9, 2022

- 1 A. Yes.
- 2 Q. How about New Mexico?
- 3 A. Tyler top to bottom, same thing.
- 4 Q. So they have File & Serve through Tyler,
- 5 and then they also have their court file or case
- 6 management file through Tyler?
- 7 A. Correct.
- 8 Q. All right. How about Oregon?
- 9 A. Oregon is Tyler all the way, same thing.
- 10 Q. Okay. How about the remainder, Texas?
- 11 A. Texas is -- yes. Tyler was -- it was
- 12 statewide e-file file and serve, and then the
- 13 individual courts have their own case management
- 14 systems, but they are almost all using Tyler
- 15 Odyssey for case management. But the universality
- 16 comes from the File & Serve. That is statewide
- 17 through Tyler.
- 18 Q. Okay. And then a Tyler Odyssey product?
- 19 A. Sorry?
- 20 Q. And then Tyler Odyssey for case
- 21 management?
- A. Yeah. Yeah. And just to be clear what
- 23 I'm saying, the -- some sort of compromise,
- 24 legislative compromise.
- But the local clerks, of which there are

Page 82

- 1 254, I believe, were able to hang on to their
- 2 traditional or heritage case management systems,
- 3 but one by one, they've been folding over to
- 4 Odyssey.
- 5 And I believe the large majority of the
- 6 state is now using Odyssey as a case management
- 7 system. But the statewide contract is for
- 8 e-filing service with Tyler.
- 9 Q. With respect to Orange County, what was
- 10 their system before they did the homegrown press
- 11 review queue?
- 12 A. Paper.
- 13 Q. Okay. And how about -- I think I've got
- 14 them all here. How about New York?
- 15 A. Vermont, you mean? No, you mean New
- 16 York. I'm sorry.
- 17 Q. Yeah.
- 18 A. Paper. I would say, just to help you
- 19 out, I think there are -- I've never -- I don't
- 20 know if I've ever seen a court change its e-file
- 21 service. So whatever they have now, it was paper
- 22 beforehand. But I'm happy to go through the
- 23 individual courts.
- Q. And just explain that to me. I don't
- 25 quite understand what you just said.

Page 83

- A. Yeah, yeah. A court, they used to be
- 2 paper, as you're aware. And then at some point --
- 3 courts are currently in the process of transition
- 4 still throughout the U.S., to e-filing.
- 5 So I'm saying any court that's now
- 6 e-filing, they didn't have a preceding different
- 7 e-filing vendor.
- 8 Q. Oh, right.
- 9 A. Their preceding system of filing was
- 10 paper.
- 11 Q. Right.
- 12 A. I don't know of any court that's switched
- 13 to e-filing and then changed vendors. It's a
- 14 pretty heavy decision to go with a vendor.
- 15 Q. Sure. Okay. So when we're talking about
- 16 New York, for instance, as paper, the litigation
- 17 involved delay in access to paper-filed
- 18 complaints?
- 19 A. No.
- 20 Q. No?
- A. No, we had great access to paper.
- 22 Q. Okay.
- 23 A. It was when they switched over to their
- 24 homegrown e-filing system.
- Q. Got it. How about Vermont? Are they

Page 84

- 1 Tyler?
- 2 A. Yes.
- 3 Q. And all the way through?
- 4 A. Yes. And they're now, as I mentioned, on
- 5 Auto-Accept.
- 6 Q. And how about Sonoma, Santa Cruz, and San
- 7 Mateo? Were they e-filing when the litigation
- 8 started, or were they paper?
- 9 A. E-filing, and all Tyler.
- 10 Q. And the Austin, Texas, court?
- 11 A. Paper before, switched to e-filing
- 12 through Tyler. And now provide a press review
- 13 queue through Tyler.
- 14 Q. Okay. So they were paper before, and
- 15 then once they went to e-filing, that's when the
- 16 litigation commenced? And now they are continuing
- 17 through Tyler; they just added a press review
- 18 queue?
- 19 A. Yeah. You know, it -- it's
- 20 not -- there's a sequence of events. So there was
- 21 a former clerk in the transition to e-filing
- 22 who -- hang on. Hang on. No. That sequence is
- 23 correct.
- 24 After they switched to e-filing, there
- 25 was a lot of negotiation, effort to work things

- 1 out, and then there was litigation.
- 2 Q. Any other jurisdictions statewide?
- 3 A. The litigation? Or do you mean the 4 access?
- 5 Q. Litigation or access after request.
- 6 A. Yeah, that's what I can think of now.
- 7 And I'm not -- like I say, I'm going -- in my mind
- 8 I'm going through the geography of the U.S. and on
- 9 the stateside, and it is a true patchwork. But
- 10 I've -- I've given you my list as best I can
- 11 remember it.
- 12 Q. Sure. I appreciate that.
- 13 A. It's pretty important to me, so I think I
- 14 remember most of them.
- 15 Q. Excellent. Now, in the jurisdictions
- 16 that have implemented Auto-Accept either after
- 17 request or litigation, does CNS continue to employ
- 18 reporters specific to those jurisdictions that
- 19 actually reside in those jurisdictions?
- 20 A. Yeah. For example, we had -- a reporter
- 21 in Honolulu reports on Hawaii through I guess it
- 22 would be the Auto-Accept system. We pay for
- 23 remote access, a registration fee.
- And then she also reports pretty
- 25 extensively on news out of Honolulu for the web
 Page 86

- 1 So there's, as I say, flexibility. But I
- 2 don't -- I can't think of any reporter that was
- 3 dismissed because we got a press review queue.
- Q. Sure. From the numbers, once a press
- 5 review queue has been adopted -- and by "press
- 6 review queue," I'm including press review queue or
- 7 public review queue in that question -- but once
- / public review queue in that question -- but one
- 8 that's been adopted, I understand there's some
- 9 reporters that may quit and then decisions made by
- 10 CNS not to replace that reporter in that
- 11 jurisdiction now that there's press review queue
- 12 or public review queue. Has that occurred?
- 13 A. Well, we would replace the work, meaning
- 14 we would have somebody else do the job. But it
- 15 doesn't have to be local.
- 16 Q. Right.
- 17 A. And I'm trying to think of an example for
- 18 you. Imperial County is the one I can think of.
- 19 It's a very small county down next to the border,
- 20 and I think we had a local reporter. She left,
- 21 and I think that job is now done remotely.
- 22 But I think she left on her own. I don't
- 23 think it had to do -- it was not timed with the
- 24 arrival of the press review queue or of the public
- 25 marious groups
- 25 review queue.

Page 88

- 1 page.
- Q. And what about all the other
- 3 jurisdictions? Have there been any reductions in
- 4 force, layoffs, terminations as a result of the
- 5 court transitioning to Auto-Accept after request
- 6 or litigation?
- 7 A. No. I mean, the work of doing the report
- 8 remains the same, right? The reporter has to go
- 9 through the reports and look at the -- go through
- 10 litigation and summarize it. That work doesn't
- 11 change. Remote access allows more flexibility.
- 12 Q. Sure. With respect to a press review13 queue, when those have been implemented in courts
- 14 that you've gone through with us, either
- 15 voluntarily or through litigation, has there been
- 16 a change in CNS's employment of reporters in those
- 17 various jurisdictions?
- 18 A. Not specifically tied to that. There's a
- 19 constant churn in a 240-member staff.
- 20 Q. Sure.
- A. And whether -- once a person quits, then
- 22 how their job gets replaced can -- if there's a
- 23 press review queue in a place that's remote as
- 24 opposed to the courthouse, then we can hire or add
- 25 the work to somebody else's workload.

Page 87

- 1 Q. Got it. And ultimately what I'm trying
- 2 to get to is if CNS is successful, for instance,
- 3 in the state of Idaho in having our federal judge
- 4 order that a press review queue or public review
- 5 queue must be put in place by the Idaho state
- 6 courts, the job that Ms. Valenti does could be
- 7 done remotely and not with somebody here in Idaho,
- 8 correct?
- 9 MR. FETTERLY: Objection as to the
- 10 characterization of the relief sought by
- 11 Courthouse News, vague.
- 12 You may answer.
- 13 THE WITNESS: I missed that part. As far
- 14 as the employment of Cathy, she's a valued and
- 15 liked employee. We would keep her in place
- 16 regardless. The job would need to be done
- 17 regardless.
- 18 If she decided for her own reasons that
- 19 it was time to move on, I would still prefer to
- 20 hire somebody in Boise because we want coverage of
- 21 local jurisdictions.
- That's part of what Courthouse News is
- 23 about, is instead of focusing on New York and DC,
- 24 which everybody else does, one of the advantages
- 25 of having local reporters is we can report on

Page 89

23 (Pages 86 - 89)

(26 of 297), Pagas261.95297.6080524069363/IAC/AP25.DK#FIEUV:2/P5928aff26 2539718

William L Girdner November 9, 2022

- 1 local controversies and local issues. So that is 2 my orientation.
- Q. (BY MS. DUKE) Now, does CNS or must CNS
- 4 employ additional reporters if a daily reports
- 5 region includes more than one jurisdiction that
- 6 has not implemented a press review queue or
- 7 otherwise does not provide remote access to newly
- 8 submitted civil complaints?
- A. I think I know what you're getting at.
- 10 Could you just give me another shot at the
- 11 question.
- Q. Sure. Must CNS employ additional
- 13 reporters if a daily reports region includes more
- 14 than one jurisdiction that has not implemented a
- 15 press review queue or otherwise does not provide
- 16 remote access to newly submitted civil complaints?
- 17 A. It's -- there is a balance, right? In
- 18 other words, to hire -- see if I can frame my
- 19 thought correctly.
- 20 It costs money to send a reporter to a
- 21 courthouse, for a reporter to cover a courthouse.
- 22 So that decision on whether to cover a courthouse
- 23 locally is made regardless of whether a press
- 24 review queue exists somewhere else.
- 25 So if you have a small remote county in

- 1 been implemented across the country?
- 2 A. No.
- 3 MR. FETTERLY: Belated objection as to
- "scraping," but I --
- 5 THE WITNESS: Let me --
- 6 Q. (BY MS. DUKE) Sure.
- 7 A. Let me give the answer correctly. We
- 8 have not employed any automated program to gather
- 9 information from a court -- from a press review
- 10 queue, period, press review queue court.
- Q. But CNS certainly uses an automated
- 12 program on public court sites where those programs
- 13 are permitted by the court, correct?
- 14 A. For docket information, yes. And for
- 15 example, with the federal courts.
- Q. So let's just stick with state courts for
- 17 now. Describe for me the automated program that
- 18 is used to do periodic sweeps of new civil cases
- 19 that are filed.
- 20 MR. FETTERLY: Objection; vague and
- 21 ambiguous, overbroad.
- 22 You may answer.
- 23 THE WITNESS: It just goes court by
- 24 court. A lot of court websites ask that we
- 25 don't -- that nobody run an automated program.

Page 92

- 1 Montana that is only paper, then we have -- as an
- 2 organization, have to make a call as to how
- 3 important it is or how worthwhile it is to get a
- 4 reporter out there to cover it. And that's
- 5 independent of whether there's a press review
- 6 queue somewhere else.
- 7 So I think what I'm trying to say is
- 8 they're not related.
- Q. Okay. What are the number of
- 10 jurisdictions a single reporter could cover in
- 11 CNS's view if a press review queue was implemented 11
- 12 in all the jurisdictions that you've gone through?
- 13 A. If you don't mind -- I know you like to
- 14 use Idaho as an example, so I'll stick with that.
- 15 The job in -- let's say we're to have a
- 16 press review queue in Idaho, hypothetically. The 17 job would stay the same. Cathy would still do it,
- 18 and she would be the statewide reporter. And the
- 19 amount of time it would take wouldn't make any 20 difference.
- 21 Do you see what I'm trying to get at?
- 22 She's still going -- anyway.
- Q. Now, has CNS employed any type of
- 24 scraping or scraping technology related to press
- 25 review queues or public review queues that have

- 1 We, of course, respect that.
- Q. (BY MS. DUKE) Well, what's the name of
- 3 the program, the automated program that CNS uses
- 4 on automated court sites to do periodic sweeps of
- 5 new civil cases?
- A. As I say, it's on some sites. And we've
- 7 been using the word "homegrown." It's a homegrown
- 8 program.

Page 90

- 9 Q. Meaning CNS created it?
- 10 A. Yes.
- O. What's it called at CNS?
- 12 A. You know, that's -- I don't know -- it's
- 13 just -- it's our automated program. I don't know
- 14 that we have a name for it.
- 15 Q. When did CNS develop this homegrown 16 program?
- A. It's over time. Websites constantly 17
- 18 change, so it has to be adapted.
- 19 Q. When do you think this automated -- let 20 me finish.
- 21 When do you think this automated program
- 22 was first used to do periodic sweeps of new civil
- 23 cases?
- 24 A. On some sites, some court sites, I'd say
- 25 ten years ago.

Page 93

24 (Pages 90 - 93)

(27 of 297), Pagas271.252.27-6080524c969763/A6/AP65-Pkthetry:2195928apa628639118

William L Girdner November 9, 2022

- 1 Q. Okay. And what court sites is this
- 2 automated program currently doing periodic sweeps
- 3 of new civil cases on?
- 4 A. I don't have a list of that. I'm trying
- 5 to think of an example for you, but the only
- $6\,$ examples I can think of are federal courts. And I
- 7 know you want state courts, but I don't know.
- 8 Q. Well, I can ask it this way and then we
- 9 can move to federal.
- 10 A. Okay.
- 11 Q. Are there any state courts that this
- 12 automatic program is doing periodic sweeps of new
- 13 civil case filings currently?
- 14 A. I'm sure that there are some state court
- 15 sites that we are checking for docket information
- 16 to help the reporter, to assist the reporter. But
- 17 I can't -- and I may, as we go on, be able to
- 18 remember this, but I can't think of any individual
- 19 sites.
- Q. How could you obtain that information
- 21 here, you know, during lunch break or something
- 22 like that so that --
- 23 A. Yeah. Yeah. I could ask for it.
- Q. And who would you ask?
- 25 A. I would ask Jimmy most likely, Jimmy, our

Page 9

- 1 understand those documents to be.
- 2 Plaintiff --
- 3 A. A docket is pretty common. In other
- 4 words, it has a plaintiff, a defendant, a case
- 5 number, often the nature of the case, like a
- 6 general category.
- 7 So in federal court, you have what are
- 8 called the case types. It's a particular code
- 9 that they use for the case type, and that's part
- 10 of the docket. There's usually a filing order as
- 11 well. Sorry, I apologize. NOS numbers, nature of
- 12 suit numbers.
- 13 Q. So as you understand it, docket, what
- 14 this is doing in the federal courts, for instance,
- 15 is looking for plaintiff, defendant, case number.
- 16 It's able to obtain this information, I guess,
- 17 with an automatic sweep of that court's site,
- 18 correct?
- 19 A. Yeah. If the reporter has not covered it
- 20 yet, all the -- it's not -- let me see if I can
- 21 answer your question correctly.
- The automated program looks for docket
- 23 information on the federal court site, including
- 24 plaintiff, defendant, nature of suit, and filing
- 25 where. And that is to assist the reporter.

Page 96

- 1 financial manager. But he has -- he plays many 2 roles.
- 3 Q. Okay. Would you please ask Jimmy, just
- 4 so we have that list of state courts that CNS is
- 5 currently using its automated, homegrown program
- 6 to do periodic sweeps of new civil filings?
- 7 A. Yeah, new docket information, not the
- 8 filings themselves.
- 9 Q. And then from a federal standpoint, what
- 10 federal courts is CNS using its automated program
- 11 on to periodically sweep new civil cases?
- 12 A. I would say all of them. Again, it's to
- 13 sweep -- not sweep. It's to check the docket
- 14 information.
- 15 Q. And when you say "to check the docket
- 16 information," what do you mean?
- 17 A. In other words, a reporter has primary
- 18 responsibility for covering a court. But we use
- 19 the automated program to assist the reporter in
- 20 gathering routine clerical information such as the
- 21 docket entries.
- Q. And those are entries such as what?
- 23 A. Docket entries. Plaintiffs, defendant,
- 24 so forth.
- Q. I'm just trying to get a list of what you

- 1 Q. And you had also mentioned case number,
- 2 correct?
- 3 A. Correct.
- 4 Q. And are Idaho federal courts swept by
- 5 this automated program?
- 6 A. The program searches the site. And I
- 7 want to be careful because I'm assuming it does.
- 8 I can check on that. Okay?
- 9 Q. All right. If you could do that, that
- 10 would be great.
- 11 A. Yeah, and I'm assuming it is because it's
- 12 a federal.
- Can I add one thing, please?
- 14 O. Sure.
- 15 A. On the program, we go in through PACER
- 16 with our PACER registration, and we pay for the
- 17 information that we grab or that we find.
- 18 Q. In a federal court?
- 19 A. Yes.
- Q. So when the automatic program is used to
- 21 look for newly filed lawsuit docket information in
- 22 a federal court, you're going through PACER to do
- 23 that?
- 24 A. Correct.
- 25 MS. DUKE: Okay. All right. We've been

Page 95

25 (Pages 94 - 97)

1

- 1 going a bit. Do you want to take a quick break?
- 2 Does that sound good?
- 3 THE WITNESS: Sure.
- 4 MS. DUKE: I'm thinking about doing a
- 5 lunch break right around 12:30 our time, 11:30
- 6 your time. Does that work for you both?
- 7 MR. FETTERLY: That works.
- 8 MS. DUKE: We'll take a quick break and
- 9 then we can cover some more ground and then take a
- 10 lunch break and then finish up.
- 11 MR. FETTERLY: Sounds great.
- MS. DUKE: Excellent. Thank you.
- 13 THE VIDEOGRAPHER: So the time is
- 14 11:41 a.m., and we are off the record.
- 15 (Break taken from 11:41 a.m. to 11:57 a.m.)
- 16 THE VIDEOGRAPHER: All right. So we are
- 17 recording. The time is 11:57 a.m., and we are
- 18 back on the record.
- 19 Q. (BY MS. DUKE) All right. We're back on
- 20 the record.
- Over the break did you have an
- 22 opportunity to talk with anybody?
- A. I talked with Mr. Fetterly.
- Q. Okay. Anyone else?
- 25 A. No.

Page 98

- Page 9
- 1 Q. All right. And have you asked your folks
- 2 to take a look at the courts so that we have an
- 3 idea where this automated program is being used in
- 4 the state courts?
- 5 A. You suggested doing that at lunchtime,
- 6 which is what I plan to do.
- 7 Q. Okay. On the top of your head, are you
- 8 aware of any state courts where that automated
- 9 program has been used by CNS?
- 10 A. I'm just thinking about California for
- 11 you. I'm sure it's running in some courts, but I
- 12 can't think of individual examples.
- To give you just a rough lay of the land,
- 14 there's -- a lot of courts put CAPTCHAs on the
- 15 system, and the program cannot handle a CAPTCHA.
- And essentially, in the big picture, the
- 17 program is just doing what a human can do and
- 18 less, actually, because it cannot go past a
- 19 CAPTCHA.
- And there's many court sites that say,
- 21 "Please do not run an automated program on our
- 22 site," and then we say, "Of course not." We
- 23 respect that.
- I know you want an example, and I don't
- 25 have one off the top of my head.

Page 99

- Q. Okay. At lunch we'll have you get one.
- 2 A. Okay.
- 3 Q. How about, do you know if it's ever been
- 4 run on the Idaho state courts?
- 5 A. I don't. Yes, I think it has been. Yes.
- 6 Q. Okay. And tell me about that.
- 7 A. Yeah. It was run for information in the
- 8 past. And I believe what happened is -- I think
- 9 we got a message saying, in rough words, "We don't 10 want you to do this anymore. We can't do this."
- 11 And we stopped.
- 12 Q. When was this?
- 13 A. It wasn't long ago. It was in -- I think
- 14 in August.
- 15 Q. And are you aware of whether that
- 16 automated program was causing the -- what impact
- 17 it was having on the server for the Idaho state
- 18 courts?
- 19 A. I'm not.
- Q. Whether it was causing the portal to go
- 21 down?
- A. No. We were not told that. And
- 23 obviously we don't want to do that. And we
- 24 respect any request to stop.
- Q. Prior to being asked to stop doing that

Page 100

- 1 with the Idaho state courts, how long had CNS been
- 2 doing that, running that automatic program?
- 3 A. I'm not sure we were asked to stop or
- 4 just cut off. I just want to make sure I'm not
- 5 misrepresenting that. I would -- I believe it was
- 6 very -- it was problematic, in any case.
- 7 And so I think we were attempting to run
- 8 it over a period of time, which I would estimate
- 9 at two years. But that's very rough.
- The true answer is I don't actually know.
- 11 But I do know that it was problematic and that
- 12 most of the time we were attempting to run it, it
- 13 wasn't running correctly. That's the best I can
- 14 tell you.
- 15 Q. And explain that to me. I don't
- 16 understand that.
- 17 A. Yeah. I mean, as I was saying, websites
- 18 change constantly, and the automated program is a
- 19 set of instructions that mimic what a person would
- 20 do for the clerical side of collecting docket
- 21 information. And they simply don't work 22 sometimes. They fail. So this one was not
- 23 working well.
- Q. And do you know if it was -- I'm assuming
- 25 in Idaho when this automated program was being

- 1 used, it was going through Idaho's portal?
- 2 A. It would have to go through however a
- 3 human would go look at docket information, which
- 4 I'm not familiar with. In Idaho it would have to
- 5 go through the same path. So if --
- Q. It would take whatever path Ms. Valenti 7 takes?
- 8 A. Correct.
- 9 Q. How about Washington? Was it -- was this
- 10 automated program being used in Washington for
- 11 some period of time?
- 12 A. Yeah, I can check for you. I don't know.
- 13 MR. FETTERLY: Real quick while we're on
- 14 this topic, I don't want to get too far ahead, but
- 15 looking ahead to the lunch break, just kind of
- 16 curious to get a sense of what level of volume or
- 17 detail, I don't know whether the call or series of
- 18 calls over a lunch break will be able to cover the
- 19 entire universe. You're looking for a couple of
- 20 examples?
- 21 We can talk about this offline. Just
- 22 while we're on this topic now, I want to
- 23 understand what you're looking for so we can try
- 24 to do our best to respond.
- 25 MS. DUKE: Sure. And, I mean, it may

Page 102

- 1
- 1 make sense to take a quick break just so you can 2 get the wheels in motion. But we'd just like to
- 3 know what state courts the automated program that
- 4 CNS created -- you know, what courts that's been
- 5 used in state court-wise.
- 6 And then I'll have questions as to
- 7 whether, you know, CNS has been asked to stop or
- 8 whether they're aware of it causing any issues for
- 9 those portals.
- 10 MR. FETTERLY: Okay. Thank you. Let's
- 11 not break right now. I think we're about
- 12 30 minutes off of your target lunchtime.
- 13 Let's -- we'll get those wheels in motion, and we
- 14 can report back after lunch where we are and what
- 15 we know.
- 16 Q. (BY MS. DUKE) Okay. So ultimately, what
- 17 this automated program that CNS uses does is it
- 18 basically extracts data in Idaho's case -- Idaho's
- 19 iCourt portal, and then provides certain data that
- 20 it's able to grab from that portal, correct? Like
- 21 you said, case names, numbers, plaintiff filing,
- 22 that type of thing?
- 23 MR. FETTERLY: Objection; vague and
- 24 ambiguous, overbroad, lacks foundation.
- 25 THE WITNESS: I would characterize it Page 103

- 1 differently from extracting data. I would simply
- say it gathered information from the docket.
- Q. (BY MS. DUKE) Okay. So it gathers
- 4 information from the docket. I'll rephrase that
- 5 then.
- 6 A. Thanks.
- 7 Q. The automated program gathered
- 8 information from, in Idaho's instance, from the
- 9 iCourt portal, and then provides that information
- 10 to CNS in an automated way?
- 11 A. That would be fair.
- 12 Q. Let me pull up a couple documents here.
- 13 MS. DUKE: All right. So today we were
- 14 served -- within the time frame permitted, we were
- 15 served Plaintiff's Responses to Defendant's Second
- 16 Set of Interrogatories, First Set of Requests For
- 17 Admissions.
- 18 I'll go ahead and share that document.
- 19 That will be our next exhibit, which is 27. So
- 20 this will be Exhibit 27.
- 21 (Deposition Exhibit No. 27 was marked.)
- 22 Q. (BY MS. DUKE) Can you see that there?
- 23 A. Yes. I'm going to get a little close to
- 24 the screen, if you don't mind. I have my reading
- 25 glasses on.

Page 104

- Q. No problem. And I'll try to make it a
- 2 little bigger for you.
- 3 A. Okay. Thanks.
- 4 Q. All right. Does that help?
- 5 A. Yeah, that's great.
- Q. All right. These were served today, and 6
- we were just talking about this automated program. 7
- 8 So let me just go to your answer to
- 9 Interrogatory No. 25, which is on page 29 of the 10 document.
- 11 You'll see here we're asking about any
- 12 type of automated program that was used by
- 13 Courthouse News there to monitor new filings and
- 14 civil cases.
- 15 That's what we've been talking about here
- 16 with this homegrown automated program, correct?
- 17 A. Correct.
- 18 Q. And you'll see -- so as Courthouse News
- 19 describes it, "Subject to and without waiving the
- 20 foregoing objections, Courthouse News responds as
- 21 follows. Courthouse News backs up its human
- 22 reporters' work with periodic sweeps of new civil
- 23 cases done by an automated program on public court
- 24 sites where such programs are permitted by the
- 25 court."

- 1 Did I read that correctly?
- 2 A. You did. It's correct.
- 3 Q. Right. And that's a correct statement of
- 4 what this automated, homegrown program does?
- Q. And that's what you're going to get us a
- 7 list for, of the states where that's being done?
- A. Correct.
- 9 Q. All right. Why does CNS use that
- 10 automated program? What's the reason?
- A. It's simply to help the reporter with
- 12 some of the clerical work. And I -- there is a
- 13 very limited -- it has very limited use.
- 14 Some reporters refuse to even use it
- 15 because it's slower correcting -- the entries from
- 16 the automated program are slower than it would be
- 17 if they typed it themselves.
- 18 But really it is to assist them and to
- 19 make sure they don't miss something. To back them
- 20 up, essentially.
- Q. And do you know if Ms. Valenti uses that
- 22 here in Idaho?

1

- 23 A. She has used it. I believe she has
- 24 commented that it doesn't work well in the past.
- 25 And that's as much as I know.

Page 106

- So, I mean, if we were running it,
- 2 normally she would have used it. But obviously
- we're not running it now, and she's not using it.
- O. We were talking -- and we'll follow back
- 5 up on that after lunch once you have some
- 6 information.
- 7 We were talking about the number of
- 8 subscribers here to the Big Sky Report, and you
- 9 had indicated there's 51 or so that you're aware 10 of.
- 11 Are there any media outlets that are a 12 subscriber?
- A. Not to the Big Sky Report. To the 13
- 14 others, many, but not to the Big Sky Report.
- Q. The Big Sky Report, as I understand it, 16 are basically the office of the city attorney and
- 17 then a host of major law firms, both from within
- 18 the state of Idaho and across the nation?
- 19 A. Correct.
- Q. All right. Let's turn to -- at any point 20
- 21 in time has CNS had any conversation with
- 22 Tyler -- and by -- I should say "communication,"
- 23 so strike that.
- 24 At any point in time, has CNS had any
- 25 communication with Tyler as to CNS extracting Page 107

- 1 information from Tyler's press review queue with
- 2 an automated program?
- 3 A. No.
- 4 Q. Has CNS at any point in time asked for
- 5 Tyler's permission to use an automated program to
- 6 extract information through an automated program?
- A. No. I'm thinking about something.
- O. Sure.

8

- 9 A. I want my answer to be accurate.
- 10 There's the -- Tyler in Texas runs
- 11 a -- what they call Re: Search where they put up
- 12 the docket information online. And I don't think
- 13 we're running a spider on -- sorry -- we're
- 14 running automated programs on that. But it's
- 15 possible. We'll check for you at lunch.
- Q. Okay. Thank you. 16
- 17 And when you were talking about the
- 18 automated program, is that commonly referred to as
- 19 a "spider"?
- A. No. It's -- there's all different words
- 21 for those programs. They're called bots. They're
- 22 also called crawlers.
- 23 O. Spiders?
- 24 A. Yeah. You know how -- a spider has a
- 25 negative association, so I prefer to go with

- 1 "automated program."
- Q. Sure. But other words for "automated
- 3 programs" are "bots," "crawlers," "spiders," et
- A. "Bot" would probably be the most common
- 6 one. Like the Googlebot is the most famous of
- 7 these programs. Which is -- that's how the court
- 8 in Idaho has its website recognized, right, is
- 9 because Googlebot found it and put it into its 10 index.
- 11 Q. All right. What communications has CNS
- 12 had with Tyler? And let's start back in -- well,
- 13 strike that.
- 14 Let me first ask, when did CNS believe
- 15 that the state Idaho courts were not providing
- 16 timely access to filed complaints?
- 17 A. When they switched to e-filing is what I
- 18 would say.
- 19 Q. And do you know the general year of that?
- 20 A. It's all over the documents. I'm
- 21 thinking five or six years ago, but it could have
- 22 been more.
- Q. And once CNS concluded that it felt that
- 24 it was not being provided timely access to e-filed
- 25 complaints, did it reach out to Tyler in any way?

(31 of 297), Paggs311.95297.6080524069363/IAC/AP85.DK#FEUV:2195928agagd 9539718

William L Girdner November 9, 2022

- 1 JCOIT meeting in Texas where we made a 1 Or when was CNS's first communication with Tyler 2 presentation -- and JCOIT stands, I believe, for 2 about this issue? 3 Judicial Committee on Information Technology --3 MR. FETTERLY: Objection; lacks 4 foundation. where we made a presentation asking for a press 5 review queue. 5 You can answer. THE WITNESS: Yeah, I don't believe we've And Terry Derrick was there. He'd made a 6 6 presentation before us, and then he was sitting 7 talked to Tyler at all about this issue. You know, the -- yeah, I don't think we have. along the side of the room. Q. (BY MS. DUKE) All right. So I'll phrase 9 And when I described the press review 10 it this way, then. 10 queue as a program, he was vigorously shaking his A. Okay. 11 11 head. 12 MS. DUKE: And I appreciate the "lack of 12 So I turned to him and I said, "Terry, if 13 foundation" objection, because that's probably why 13 you've got something to say, go ahead." 14 it was made. 14 And he said, "It's not a program. It's Q. (BY MS. DUKE) At any point in time, has 15 an app." 15 I said, "Okay. We'll call it an app." 16 Tyler -- strike that. 16 17 At any point in time, has CNS talked with 17 So we had that exchange. 18 Tyler about this lawsuit? 18 Q. All right. Any other communications or 19 A. Not that I can think of. exchanges that CNS has had with Tyler, absent any 20 lawyer communications, related to a subpoena or
- 20 MR. FETTERLY: I'll just clarify. Are we
- 21 talking about the third-party subpoena and
- 22 communications with counsel, KL Gates?
- 23 Or are you -- I want to be clear on that
- 24 because, Keely, as you know, counsel have spoken
- 25 to Tyler with thinking it was the subpoena. So if

Page 110

1 somewhat -- I would call it introductory

23 with -- he's a senior sales guy, I think, with a

24 really gravelly voice. And we talked about the 25 access in California, but it was a general civil

A. There was one conversation years ago

2 conversation.

21 deposition?

22

- 3 Q. Any others?
- A. The exchanges, as I said, with Nina 4
- 5 Minney that I think you have the records on.
- Q. And tell me what those exchanges with 6 Nina Minney were.
- A. Oh, I had written a column, and it was
- 9 about -- what was it called? The Money Versus
- 10 Access or something.
- 11 And I was describing how the Re: Search
- 12 system run by Tyler in Texas and elsewhere was a
- 13 split of income where the courts were getting copy
- 14 fees and Tyler was getting search fees.
- And then Nina was -- you know, some email
- 16 to me saying she thought I should mention the fact
- 17 that the initial public search was free.
- 18 And so -- but she was saying my
- 19 description was inaccurate, and I took a bit of
- umbrage at that.
- 21 And I admit I was a little snippy in my
- response, but I said in essence that she's right,
- 23 that the initial search is free and that I could
- 24 phrase my description with that in mind in the
- 25 future.

Page 113

Page 112

- 1 you could just clarify your question, please.
- Q. (BY MS. DUKE) Sure. At any point in
- 3 time aside from a deposition request or a 30(b)(6)
- 4 request or subpoena, has CNS had any
- 5 communications at all with Tyler about this Idaho
- 6 lawsuit?
- 7 A. Let me just say, I have not. And as far
- 8 as our lawyers, I don't know. Like Jon mentioned
- 9 correctly that there's a deposition coming up, so
- 10 that involved communication, obviously. But
- 11 outside that, I don't know of any other
- 12 communication.
- 13 Q. Right. And -- go ahead.
- 14 A. Well, concerning this lawsuit.
- 15 Q. Has CNS had any communication with Tyler
- 16 about its press review queue? And again, not
- 17 including any request for a deposition or a
- 18 subpoena in this action.
- 19 A. Right. I don't think so. There was this
- 20 exchange with Nina Minney, right? That I think
- 21 you have the documentation on that where -- and
- 22 there was a tangential reference to a press review
- 23 queue in that exchange, but not beyond that.
- 24 Oh, I'm sorry. There was one.
- 25 In -- five years ago, maybe, four. There was a

Page 111

29 (Pages 110 - 113)

- 1 And also -- sorry --
- 2 Q. Go ahead.
- 3 A. That's also where I got the product
- 4 statement, on the press review. I think she
- 5 attached that.
- 6 Q. And when were these communications?
- 7 A. I'm guessing two or three years ago.
- 8 Q. And who did you understand Nina Minney to
- 9 be?
- 10 A. She's from the PR department of Tyler
- 11 Technologies.
- 12 Q. Other than that communication or exchange
- 13 that you've just testified to, any other
- 14 communication or exchange with Nina Minney?
- 15 A. Those three represent the sum total.
- 16 Q. And then you mentioned a senior sales guy
- 17 that you discussed the California program with.
- 18 Describe that for me and when that was.
- 19 A. It was a long time ago. I think it was
- 20 just to meet and greet. We did not consider Tyler
- 21 an opponent or a friend. We just -- we were
- 22 working -- you know, it was just, as I said, a
- 23 meet-and-greet, so we weren't running -- a
- 24 courtesy.
- Q. Any other communication with any type of Page 114

- 1 he's the head of fulfillment services, I think,
- 2 something like that.
- 3 You know, those euphemisms, they can be a
- 4 number of things. But I think he interfaces with
- 5 court personnel quite a bit.
- 6 Q. And when he vigorously shook his head and 7 insisted that rather than call press review queue
- 8 a program, it should be called an app, what did he
- 9 explain as to why that was the case?
- 10 A. That's all he said. I mean, I shook his
- 11 hand afterwards. "How are you doing?" And that's 12 it.
- But he did not -- he did not go on
- 14 further. He just wanted to correct my use of the
- 15 word "program." And he wanted me to call it an 16 app, and I said, "Fine."
- Q. And did you do any type of investigation
- 18 or looking into why they want it to be called an
- 19 app and not a program?
- A. No. I mean, I think he's accurate. It
- 21 is an application. But an application relies on
- 22 programming. So both words are correct.
- Q. What do you understand Tyler's press
- 24 review queue to be?
- A. It's a filtered queue that only allows

Page 116

- 1 salesperson with Tyler other than what you've just
- 2 relayed? And obviously this is on CNS's behalf.
- 3 A. Yeah. Yeah. Yeah. No. I mean, you
- 4 know, we've seen lots of emails from Tyler reps
- 5 and so forth. I don't believe I've ever talked to 6 a Tyler rep directly.
- 7 Our lawyer in Atlanta, I believe he
- 8 emailed a Tyler rep in the context of access
- 9 review queue in Atlanta, but I was not involved in
- 10 those exchanges.
- 11 Q. And then approximately five years ago you
- 12 indicated there was that meeting in Texas.
- 13 A. Yeah.
- Q. And that Tracy Derrick had, you know,
- 15 insisted that press review queue was an app.
- When was that? Do you think it was about five years ago?
- 18 A. It's Terry Derrick. T-e-r --
- 19 Q. Terry?
- 20 A. Yeah. In the initial adjacent meeting,
- 21 we made that presentation. I would say -- let me
- 22 just kind of track back four to five years ago.
- Q. And who's Terry Derrick?
- A. I think he's called a fulfillment -- he's
- 25 the head of -- he's an executive at Tyler. And

- 1 public documents into a queue that allows
- 2 reporters to see the new public civil complaints
- 3 shortly after they're filed. And if -- yeah. Let
- 4 me correct that. Shortly after they're received.
- 5 Q. What does a complaint being filed mean to 6 you?
- A. It means that it crosses the counter into
- 8 the court and gets stamped. Sorry, I just -- it
- 9 crosses the counter into the court. That's it.
- 10 Q. Well, the old way was it would cross the
- 11 counter and it would get stamped, correct?
- 12 A. That's correct.
- 13 Q. And isn't that what your understanding of
- 14 the new way is, that it crosses the electronic
- 15 counter, gets stamped, and is then in the file?
 - A. Yeah. The stamping is a little bit
- A. Yean. The stamping is a little bit
- 17 mysterious. There is a shadow stamp that gets put
- 18 on it.
- 19 Q. And what do you mean by that?
- 20 A. There was testimony in our New Mexico
- 21 case where the head IT person before the state
- 22 said a shadow time stamp and date stamp gets fixed
- 23 on the document as it comes in.
- Q. Did they explain why or what that meant?
- 25 A. No.

Page 117

30 (Pages 114 - 117)

(33 of 297), Pagas331.52297, 60805240697503/196/2025. Pkffigtry: 2/193/2294633 9529718

William L Girdner November 9, 2022

- 1 Q. And that was a Tyler product?
- 2 A. Yes.
- 3 Q. Okay. So in the state of Idaho, you
- 4 understand that in the e-filing context, the
- 5 complaint is -- crosses the clerk's desk and is
- 6 stamped and placed into the court's file?
- 7 MR. FETTERLY: Objection; vague and
- 8 ambiguous, overbroad as to scope and time and
- 9 specifically whether we're talking about paper
- 10 versus electronic filing.
- 11 MS. DUKE: I had said e-filing, but okay.
- 12 THE WITNESS: It's okay. I just don't
- 13 think it's right anyway. Okay. Let me explain.
- 14 Q. (BY MS. DUKE) Yeah.
- 15 A. It crosses the counter into the court,
- 16 the virtual counter, and goes into a queue. The
- 17 clerk then checks the clerical entries, what I
- 18 call the pre-docketing entries made by the filer,
- 19 and then accepts it. And then it goes into the
- 20 public docket.
- Q. And CNS's issue is not with the
- 22 pre-docketing review that is done, correct?
- A. Well, we want access to the records at
- 24 the same time, but the public records. So that's
- 25 why I say it's a filtered queue. You see, it runs

Page 118

- parallal to the alark's queue
- 2 Q. So you want them before they're filed?
- 3 MR. FETTERLY: Objection; vague and
- 4 ambiguous, overbroad, calls for a legal
- 5 conclusion.
- 6 THE WITNESS: That's what our dispute is
- 7 about. I'm saying they're filed when they cross
- 8 the virtual counter.
- 9 I understand you're saying they're filed
- 10 later. But that's, as I say, for you folks to
- 11 argue about before Judge Nye.
- 12 Q. (BY MS. DUKE) Well, I think it's
- 13 important for Judge Nye to understand CNS's
- 14 position.
- 15 A. Yeah.
- 16 Q. As well as ours, and the definitions that
- 17 are being used. So let me see if I can try to
- 18 clarify some of that.
- Would you agree that a complaint
- 20 initiates a civil -- strike that.
- Would you agree that a civil complaint
- 22 initiates a lawsuit once it is filed?
- MR. FETTERLY: Objection; vague and
- 24 ambiguous as to the word "filed," calls for a
- 25 legal conclusion. I don't believe we have a

- 1 common understanding or definition of that term.
- THE WITNESS: I can answer that question.
- 3 It initiates a lawsuit. That's true.
- 4 Q. (BY MS. DUKE) All right. Do you agree
- 5 that "file" means accepting a docket into the
- 6 official court record?
- 7 A. I do not.
- 8 Q. Why not?
- 9 A. Because it's filed when it's submitted.
- 10 Q. So it's filed before a clerk ever even
- 11 sees it?

18

- 12 A. No. I think the clerk has access to it
- 13 as soon as it's submitted.
- 14 Q. No, not under your definition. So as I
- 15 understand it, it's your testimony that the second
- 16 it is submitted into Tyler's File & Serve, it is
- 17 now a court document; is that correct?
 - A. No, I didn't say that either. Sorry.
- 19 MR. FETTERLY: Objection; misstates prior
- 20 testimony, argumentative.
- 21 THE WITNESS: It does misstate the prior
- 22 testimony. That's not my testimony.
- Q. (BY MS. DUKE) Okay. Well, what is your
- 24 testimony on that?
- 25 A. I have said a number of times that when

Page 120

- 1 parallel to the clerk's queue. 1 it's submitted, it's filed.
 - 2 Q. That's what I'm saying. And so you
 - 3 are -- it's your theory that in the state of
 - 4 Idaho, if a document, a complaint, is submitted to
 - 5 Tyler's File & Serve, that means it's immediately
 - 6 filed, correct?
 - 7 A. No.
 - 8 MR. FETTERLY: Objection; vague and
 - 9 ambiguous, lacks foundation, calls for legal
 - 10 conclusion.
 - 11 You may answer.
 - 12 THE WITNESS: It gets filed when it's
 - 13 submitted.
 - 14 Q. (BY MS. DUKE) Okay. So that's what I'm
 - 15 trying to clarify.
 - 16 So the second it is submitted means to
 - 17 you it is then immediately filed?
 - 18 A. It's filed --
 - 19 MR. FETTERLY: And objection; vague and
 - 20 ambiguous as to the term "immediately filed."
 - 21 MS. DUKE: Well, I'm just trying to have
 - 22 him explain.
 - 23 Q. (BY MS. DUKE) So you just said, "I have
 - 24 said a number of times when it's submitted it's
 - 25 filed." So explain what you mean by that.

Page 121

31 (Pages 118 - 121)

William L Girdner November 9, 2022

4

7 filing?

8

13

14

17

20

22

25

12 those lips.

19 conclusion.

A. Okay.

- 1 A. Those are pretty simple words. I'm not 2 trying to be a smart ass.
- 3 Q. I think you are kind of trying to be a
- 4 smart aleck, but go ahead. We'll let Judge Nye
- 5 decide that.
- 6 A. Yeah, you bet. When it's submitted, it's 7 filed.
- 8 Q. Is there any time period that exists when
- 9 something is submitted that would -- well, strike
- 10 that.
- So if a document is submitted, under your
- 12 understanding, in the state of Idaho, that means
- 13 it is filed, correct?
- 14 A. That's when it's filed.
- 15 Q. Okay. Therefore, no clerk reviews the
- 16 submissions to accept the document to be filed,
- 17 correct?
- MR. FETTERLY: Objection; vague and
- 19 ambiguous, overbroad, lacks foundation, calls for
- 20 speculation.
- You may answer.
- THE WITNESS: The clerk can see it right
- 23 away at the same time.
- Q. (BY MS. DUKE) No, that's not the
- 25 question.

- Page 122

24 familiar with them myself.

- What I'm saying is you're saying when
- 2 it's submitted, it's automatically filed, correct?
 3 MR. FETTERLY: Objection; vague and
- 4 ambiguous, overbroad, calls for speculation.
- 5 You may answer.
- 6 THE WITNESS: I'm saying at the time it's
- 7 filed. We're not in an Auto-Accept court.
- 8 Q. (BY MS. DUKE) No, what you're saying is
- 9 when it's submitted, it's automatically filed.
- 10 A. No, I'm saying that's the time of filing.
- 11 Q. So you're saying when it's submitted,
- 12 that's the time of filing?
- 13 A. Correct. And that's when we'll write it,
- 14 yes.
- 15 Q. Why are you saying in the state of Idaho
- 16 that when a complaint is submitted that is its
- 17 time of filing?
- 18 A. Because that's the general standard
- 19 nationwide.
- 20 Q. Well --
- A. I know of no exceptions to it.
- Q. And as we established early on in your
- 23 deposition, you don't know any of the Idaho rules
- 24 of electronic filing, correct?
- A. I looked at them as I said earlier in the

1 considering those rules in your answers here

1 deposition, but I don't know what you mean by

5 the deposition, refer to any as they rely or are 6 relevant to this topic of submission versus

11 your prior testimony. Let's hear it again out of

Q. Are you aware of any Idaho rule of

15 electronic filing that addresses what submitted

16 complaints or documents are versus filing?

18 ambiguous, lacks foundation, calls for legal

21 these terms, but you may answer.

23 rules that address this topic, but I'm not

testimony, argumentative.

2 "know." I don't have them memorized, that's for

Q. Well, you can't, as you stated earlier in

MR. FETTERLY: Objection; misstates prior

MR. FETTERLY: And objection; vague and

I don't know that we agreed on any of

THE WITNESS: Yeah, I think there are

Q. (BY MS. DUKE) And, therefore, you're not

Q. (BY MS. DUKE) Well, let me not misstate

- 2 today, correct?
- 3 MR. FETTERLY: Objection; misstates prior
- 4 testimony, argumentative.
- 5 THE WITNESS: I think they're most likely
- 6 consistent with my --
- 7 Q. (BY MS. DUKE) That's not my question.
- 8 If you know that there are rules but you're not
- 9 familiar with them yourself, you, therefore, can't
- 10 be relying on those rules one way or the other,
- 11 correct?
- MR. FETTERLY: Objection; misstates prior
- 13 testimony, lacks foundation, calls for a legal
- 14 conclusion.
- 15 Mr. Girdner was not brought here to
- 16 testify regarding the identification,
- 17 interpretation, or application of any rule,
- 18 statute, or other law. We're pretty far afield of
- 19 the 30(b)(6) topics. We're trying to be patient
- 20 with you here, but pretty soon I'm going to
- 21 instruct him not to answer.
- 22 Mr. Girdner --
- 23 MS. DUKE: I hope you do, Mr. Fetterly.
- MR. FETTERLY: Mr. Girdner is not here to
- 25 argue the legal issue of this case.

Page 125

- 1 MS. DUKE: These aren't legal issues.
- 2 I'm asking for a factual basis, and that's exactly
- 3 what I'm permitted to do here.
- 4 And your speaking objections are too much
- 5 at this point. So if you're going to continue
- 6 those, we'll go ahead and postpone the deposition.
- 7 We'll bring those speaking objections up to the
- 8 court. We'll adjust the deadlines accordingly,
- 9 and we'll go forward from there.
- 10 MR. FETTERLY: I made my objection.
- 11 Mr. Girdner, you can answer if you can.
- 12 THE WITNESS: I've said a number of times
- 13 that the national standard, which I have no reason
- 14 to believe Idaho is different from because I've
- 15 never heard an exception to this, is that when the
- 16 filing is submitted, it is then filed.
- 17 Q. (BY MS. DUKE) And your testimony in this
- 18 case for that position is based on what you
- 19 understand to be a national standard, correct?
- A. Yes, that's correct.
- 21 Q. Not based upon any knowledge you have as
- 22 to what the Idaho rules of electronic filing say
- 23 on this issue, correct?
- A. I don't know what they say. That's for
- 25 you folks to interpret.

Page 126

- 1 Q. Right. And you don't know what they say,
- 2 and, therefore, the testimony that you're
- 3 providing on this issue is not factoring those
- 4 rules in, correct?
- 5 MR. FETTERLY: And objection to the
- 6 extent this is beyond and outside the scope of the
- 7 Rule 30(b)(6) topics.
- 8 But you may answer.
- 9 THE WITNESS: I'm not -- I don't have the
- 10 rules memorized. I've looked at them, and I think
- 11 they address this topic. But that's not what I'm
- 12 basing my statement on. I'm basing my statement
- 13 on a national standard. And I know of no
- 14 exception here, and I'm sure there's no
- 15 exceptions, actually.
- 16 Q. (BY MS. DUKE) Well, you can't be sure if
- 17 you haven't actually reviewed the Idaho rules of
- 18 electronic filing related to this issue; fair?
- 19 A. No. I really don't think so. I don't
- 20 think that's fair. I don't think --
- Q. So if you don't know what something
- 22 says -- if you don't know what something says, you
- 23 can somehow just automatically exclude it just
- 24 because.
- A. I can say there's a national standard.

- 1 Q. Okay. And not a standard in the Idaho 2 courts?
- 3 A. I don't believe there is any exception to 4 it, including Idaho.
- 5 Q. And that's because you have not looked at
- 6 the Idaho rules of electronic filing to determine
- 7 how the Idaho electronic rules of filing address
- 8 submitted versus filed?
- 9 A. I have looked at some of the rules.
- 10 Q. But you're not relying on any --
- 11 A. I don't have them memorized.
- 12 Q. Correct. And you're not relying on any
- 13 of those rules in providing your testimony here
- 14 today, correct?
- 15 A. I'm relying on the national standard.
- 16 Q. Right. So the answer to my question is
- 17 you are not relying on any of those rules, the
- 18 Idaho rules, in providing your testimony here
- 19 today, correct?
- A. I'm relying on the fact that I don't
- 21 believe the Idaho rules have any exception from my
- 22 review of them, which has been very brief in
- 23 summary, I agree.
- MS. DUKE: Ms. Simmons, will you please
- 25 read my question back?

Page 128

- 1 (The record was read by the reporter.)
- 2 MR. FETTERLY: Objection; asked and 3 answered.
- 4 THE WITNESS: Yeah, I'm not relying on
- 5 them specifically.
- 6 Q. (BY MS. DUKE) What does CNS consider to
- 7 be delayed access to newly E-filed civil
- 8 complaints in this lawsuit?
- 9 A. Access past the time of receipt or
- 10 shortly thereafter, as we see in so many other
- 11 courts, state and federal.
- 12 Q. How much time shortly thereafter? What's
- 13 too long?
- 14 A. Yeah, I'd say a few minutes. For
- 15 example, in Miami -- I'm sorry, in Florida, we
- 16 agreed with the e-filing authority to -- at the
- 17 time of receipt or within five minutes afterwards.
- 18 I think that's typically the amount of time that
- 19 it takes for these -- for the complaints to come
- 20 into the system.
- Q. So it's your testimony that in the state
- 22 of Idaho, the Idaho state courts will be causing a
- 23 delay in access to newly e-filed civil complaints
- 24 if CNS does not have those within a few minutes;
- 25 is that correct?

Page 129

33 (Pages 126 - 129)

(36 of 297), Paggs361.95297.6080524069363/IAC/AP25.DK#FIEUV:2/P5922apea36 9539718

William L Girdner November 9, 2022

- 1 MR. FETTERLY: Objection; vague and 2 ambiguous, overbroad, lacks foundation. 2 THE WITNESS: I just don't understand the 3 4 phrase. 4 5 5 Q. (BY MS. DUKE) What phrase? A. The whole thing. You can have the court 6 7 reporter read it back. I don't care. 7 8 MS. DUKE: Sure. Let's have her do that. 8 9 (The record was read by the reporter.) 10 MR. FETTERLY: And objection; vague and 11 ambiguous, overbroad, lacks foundation, incomplete 12 hypothetical. 12 does? 13 MS. DUKE: All right. Mr. Fetterly, when 13 14 she reads it back, you don't do that. That's the whole point, to try to not confuse the witness. 15 16 Go ahead and read it back again, Ms. 16 17 Simmons. I'm really sorry about that. 17 18 (The record was read by the reporter.) 19 THE WITNESS: I don't understand the 20 question. I really don't. 21 Q. (BY MS. DUKE) How long do you believe 22 the Idaho state courts could take without it being 22 23 considered a delay by CNS --24 A. Sure. 24 25 Q. -- for them to provide access to CNS of Page 130 1 newly filed complaints? A. It's not something I can guess at or 2 3 define what the correct amount of time is. I can 4 say that the right of access attaches on receipt. 5 5 And after that, the court needs to justify delays. 6 It needs to have an overriding reason and no less 6 it. 7 restrictive alternative. So that's how I would 7 8 analyze whether the delay is, you know, consistent 8 9 with the First Amendment or not. Q. (BY MS. DUKE) Well, and based on what 11 you just provided as to your understanding of the 12 First Amendment, what is the time frame where that
- 13 would be considered by CNS to be a delay in the 14 state of Idaho? 15 A. It has to be analyzed within that 16 framework. There's no magic number. Q. Right. So you would agree there's no 17 18 magic number? 19 A. I would agree. Q. What is important to CNS is that it 21 receive either immediate, or close to it, access 22 to newly filed complaints in the state of Idaho? 23 A. That's not what I said. 24 Q. Well, you would agree that it -- that CNS 25 wants access to newly filed complaints in the
- 1 state of Idaho in a timely fashion? MR. FETTERLY: Objection; vague and 3 ambiguous as to "timely." You may answer. THE WITNESS: Yeah. As I defined "timely," which is shortly after -- at receipt or shortly thereafter. Q. (BY MS. DUKE) You would agree that it is 9 important to CNS that it receive -- to be, I 10 guess, First Amendment compliant, that CNS needs 11 to receive newly filed complaints quicker than it MR. FETTERLY: Objection; vague and 14 ambiguous, overbroad, incomplete hypothetical, 15 calls for a legal conclusion. You may answer. THE WITNESS: To answer that question, I 18 would have to run through the First Amendment 19 analysis. I would say the right of access 20 attaches on receipt. And then the State has to 21 justify delays. Maybe it can. Okay? Q. (BY MS. DUKE) Okay. And when you say 23 "receipt," what do you mean by "receipt"? A. When the court receives the submission, 25 which is generally very close to the time Page 132 1 submission, if not identical to it. Q. And when you say "when the court receives the submission," do you mean when the court has filed the document? A. No. I mean when the filer has submitted Q. And --MR. FETTERLY: Belated objection as to 9 the term "filed." We, again, don't have a common understanding or definition, so vague and ambiguous, overbroad, potentially calls for a 12 legal conclusion. 13 MS. DUKE: All right. Let's go to 14 Webster's so we can get that all sorted out. Q. (BY MS. DUKE) Mr. Girdner, do you have 15 16 an actual definition of "filed" in your mind? A. Well, I've been saying a number of times 17 18 it's when it's submitted. 19 Q. Now, you would agree that the purpose of 20 a complaint being filed is to place it in the 21 court's case management system, correct? 22 A. I would not agree with that. 23 Q. Would you agree that the word "file" 24 means submitting to be placed on record by the 25 appropriate authority?

34 (Pages 130 - 133)

Page 133

(37 of 297), Pagas 3719 290 60805 24 6697 03 118 William L Girdner November 9, 2022

1 A. I already said "submitted." That's what 2 I mean.	1 Q. And you attended Ms. Dvorak's deposition? 2 A. I did.
3 Q. My question is would you agree that the	3 Q. Do you have any access to any notes or
4 word "file" means when it is submitted to be	4 email communications or text communications during
5 placed on record by the appropriate authority?	5 the course of this deposition?
6 A. No.	-
7 Q. When you say "submitted," what is it	6 A. No. You mean as we're talking?7 Q. Correct.
8 being submitted to in the state of Idaho?	8 A. No, I have I call Mr. Fetterly during
9 A. It's being submitted into an e-file	9 the breaks. That's it.
 10 manager which is controlled by the state of Idaho. 11 Q. The e-file manager is Tyler File & Serve, 	
11 Q. The e-file manager is Tyler File & Serve, 12 correct?	11 have as to who manages the case management system
	12 for the state of Idaho is through Ms. Dvorak's
13 A. Correct.	13 deposition; is that correct?
Q. And have you talked to Tyler as to who is	14 A. Yeah, it's just "manages" is what I'm
15 responsible for the data contained within the	15 having a little trouble with. I remember her
16 E-File & Serve that Tyler manages?	16 saying that it's hosted by the courts. But, as I
17 A. No.	17 said, I don't know where the data is kept.
18 Q. Do you know through any communications	18 Anyway, you know
19 with Tyler or the Idaho courts as to what	19 Q. You understood it's hosted by the courts,
20 documents well, strike that.	20 not by Tyler, correct?
With respect to Tyler File & Serve, do	21 A. The case management system itself. But
22 you have an understanding of where those documen	• •
23 are hosted when they are submitted to Tyler	Q. So to be clear, the case management
24 File & Serve?	24 system is hosted by the Idaho courts, not Tyler,
25 A. I believe they're hosted in the e-file Page 13	25 correct? Page 136
Tuge 13	1 ugo 130
1 manager.	1 MR. FETTERLY: Objection; calls for
2 Q. And do you know who manages the e-file	2 speculation.
2 Q. And do you know who manages the e-file 3 management?	2 speculation. 3 THE WITNESS: It's a Tyler product, so
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35 (Pages 134 - 137)

(38 of 297), Paggs381.952.97.68865246697303/116/21265-Pktfiptry:2195922apea38 sf 297.18

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	1	Tyler product?	1	A. Same.
	2	A. I'm assuming	2	Q. Okay. So Idaho should be on that list
	3	Q. Don't assume. Do you know?	3	too, for
	4	A. I don't know.	4	A. No. No. Because it's not running.
	5	Q. Okay.	5	Q. Oh, this is where it's currently running?
	6	MS. DUKE: All right. Let's go ahead and	6	A. Correct.
	7	take our lunch break. We'll see you back in about	7	Q. Okay. And where has it run in the past
	8	an hour.	8	where you've all been asked to stop like Idaho?
	9	MR. FETTERLY: Great. Okay.	9	MR. FETTERLY: Objection; misstates prior
	10	THE VIDEOGRAPHER: Okay. So the time is	10	testimony.
	11	12:51 p.m., and we are off the record.	11	You may answer.
	12	(Lunch break taken from 12:51 p.m. to 1:57 p.m.)	12	THE WITNESS: Yeah, I don't have that. I
	13	THE VIDEOGRAPHER: All right. So we are	13	just have the list where we're running. That's
	14	recording. The time is 1:57 p.m., and we are back	14	what I asked him for.
	15	on the record.	15	MS. DUKE: Okay. Well, why don't we take
	16	Q. (BY MS. DUKE) All right. We're back on	16	a quick break and why don't you ask him where
	17	the record after a lunch break.	17	you're no longer running it and why.
	18	Other than your counsel, did you talk to	18	MR. FETTERLY: We can do that.
	19	anyone else over the lunch break?	19	MS. DUKE: Okay. Thanks.
	20	A. Yes, I talked to Jimmy Shimabukuro,	20	MR. FETTERLY: See what you can find out.
	21	because you'd asked for the list of states where	21	I don't know if that information is available, but
		we're spidering I'm sorry where we're using	22	we'll ask.
		an automated program.	23	MS. DUKE: All right. Thank you.
	24	Q. And what did you I guess fill me in on	24	THE VIDEOGRAPHER: Okay. So the time i
	25	your conversation.	25	2:00 p.m., and we are off the record.
		Page 138		Page 140
	1	A. Yeah. I asked him for a list that he	1	(Break taken from 2:00 p.m. to 2:15 p.m.)
	2	dictated to me.	2	THE VIDEOGRAPHER: All right. So we are
	3	Q. Perfect. Anything else other than that?	l .	recording. The time is 2:15 p.m., and we are back
	4	A. No.	4	on the record.
	5	Q. All right. So tell us the list.	5	MS. DUKE: We're back on the record.
	6	A. Alaska, California, Florida, Georgia,	6	Q. (BY MS. DUKE) Did you have an
	7	Illinois, Kansas, Minnesota, Montana, North	7	opportunity to make a call to determine the
	8	Dakota, Nevada, Ohio, Oklahoma, Pennsylvania,	8	questions we were asking prior to the break?
	9	South Carolina, Tennessee, Texas, Virginia, and	9	A. I did.
	10	Wisconsin. 18 states in all.	10	Q. All right. And who did you call?
	11	Q. All right.	11	A. Jimmy.
	12	MS. DUKE: Go ahead, Jon.	12	Q. And remind me, what's his title?
	13	MR. FETTERLY: Double-check your math.	13	A. Jimmy Shimabukuro, he's the chief
	14	THE WITNESS: No, it's 18. It's correct.	14	financial officer, but he's also the office
	15	MR. FETTERLY: Okay.	15	manager.
	16	Q. (BY MS. DUKE) And what about Idaho?	16	Q. And how long has he been in that role?
	17	A. No.	17	A. Oh, ten years, I would say.
	18	Q. So what was it in Idaho that you were	18	Q. All right. And what did you learn?
		doing when you were asked to stop using the	19	A. The states where we've stopped
	20	automated program?	20	spiders stopped spiders, is Maryland, Arizona,

A. The same thing. An automated program

21

22 checking for docket information.

Q. How was that different than the program

24 that was used with respect to the states you just

25 read off?

Page 139

24 Carolina, and Texas. 25 Q. And what are the reasons for stopping the Page 141

21 Washington, D.C., Florida, Georgia, Hawaii, Idaho,

23 Maryland, Missouri, Nevada, Ohio, Oregon, South

22 Kansas, Louisiana, Massachusetts, Michigan,

36 (Pages 138 - 141)

(39 of 297), Pagas 391.2527.6086524669763/116/21085-PkHabty:2195928apa39887118

William L Girdner November 9, 2022

- 1 use of spiders in those jurisdictions?
- 2 A. It would require looking into each one.
- 3 Q. Oh, you would need to look at each one as
- 4 to why that occurred?
- 5 A. Yeah.
- 6 Q. He didn't know?
- 7 A. No.
- 8 Q. Did he have any details on Idaho beyond
- 9 what you had testified to?
- 10 A. He just said it stopped working.
- 11 Q. Thank you for reaching out to Jimmy. I
- 12 appreciate it.
- 13 A. You bet.
- 14 Q. All right. So back to some questions to
- 15 just hopefully close the loop on this area of
- 16 questioning and then move on.
- We've obviously talked that it's my
- 18 understanding that "submitted" to you means
- 19 "filed." Fair?
- 20 A. Correct. Fair.
- Q. So when you say "submitted," is that
- 22 submission to the e-filing vendor?
- 23 A. Yes.
- MR. FETTERLY: Objection; vague and
- 25 ambiguous, overbroad, lacks foundation.

- 1 that once it goes through the clerk's process and
- 2 is accepted, it then transitions into the court's
- 3 case management system?
- 4 A. That's correct.
- 5 Q. Do you know whether when a complaint in
- 6 Idaho is submitted to Tyler's File & Serve,
- 7 whether a court case number is opened at that
- 8 point?
- 9 MR. FETTERLY: Objection; vague and
- 10 ambiguous, overbroad, lacks foundation, calls for
- 11 speculation.
- 12 THE WITNESS: I don't believe it does. I
- 13 think it has a case ID number.
- 14 Q. (BY MS. DUKE) What is your understanding
- 15 of when a court action will actually be opened and
- 16 a case number provided when a complaint is
- 17 submitted to Tyler File & Serve?
- MR. FETTERLY: Same objections.
- 19 THE WITNESS: I'm not agreeing with
- 20 "opened" there. I'm happy to tell you when I
- 21 think it gets a case number. Is that okay?
- Q. (BY MS. DUKE) Sure.
- A. Okay. When it's accepted.
- Q. And when you say "when it's accepted,"
- 25 that means accepted by the court clerk and

Page 144

- 1 THE WITNESS: And can I complete that 2 answer?
- 3 Q. (BY MS. DUKE) Sure.
- 4 A. Yeah, it's submission to the vendor that
- 5 is acting for -- that is providing the e-file
- 6 service to Idaho.
- 7 Q. Right. And in this case, that's Tyler
- 8 E-File & Serve?
- 9 A. Correct.
- 10 Q. So "submission" and, therefore, "filing"
- 11 to you means submission of a complaint through
- 12 Tyler's e-filing system?
- 13 A. To the court.
- 14 Q. And then what do you call the transfer of
- 15 that complaint from Tyler's File & Serve to the
- 16 court's case management system?
- 17 A. Well, I don't think it's from Tyler's
- 18 File & Serve. I think Tyler File & Serve, that's
- 19 the vehicle for which the complaint goes into the
- 20 e-file manager. And then it goes into queues that
- 21 the deputy clerks have access to. They then
- 22 process the cases. And when they accept them, the
- 23 cases move into the case management system.
- Q. So it's your understanding that once
- 25 something is submitted to Tyler E-File & Serve,

- 1 transferred to the court's case management system?
- 2 A. Yeah. Another way to put it is when the
- 3 processing is completed. Then there's a permanent
- 4 case number assigned that's within the Tyler
- 5 system.

Page 142

- 6 And if I can just add to that, within the
- 7 Tyler system as it's set up in Idaho. In other
- 8 words, Tyler also runs Auto-Accept systems where
- 9 the case number, the permanent case number is
- 10 assigned automatically upon receipt.
- 11 Q. And that's not what is happening in
- 12 Idaho, correct, at this time?
- 13 A. That's correct.
- Q. And so when you say submit equals filed,
- 15 are you essentially saying that's Auto-Accept? Or
- 16 is that something different?
- 17 A. No. I'm saying it is filed at that
- 18 point. That's all I'm saying.
- 19 Q. And under an Auto-Accept, if that were
- 20 used, a case file number would actually be
- 21 generated at the time of submission to Tyler
- 22 File & Serve, correct?
- 23 A. A permanent case number is the word I'm
- 24 using. I think that's the correct word.
 - Q. And is that correct?

Page 145

37 (Pages 142 - 145)

Page 143

25

(40 of 297), Pagas401.5227.6086524069363/116/2025-Pktfiptry:2195922apade 3529718

William L Girdner November 9, 2022

- 1 A. Yes.
- 2 Q. Now, in Idaho, with respect to the spider
- 3 or bot that CNS was using and has stopped using,
- 4 did you have to log into iCourt through
- 5 Ms. Valenti's account in order to do so? Or did
- 6 CNS have some other access to the iCourt portal
- 7 other than through her account?
- A. I don't know. If the docket is public
- 9 and online, then it would be the spider
- 10 or -- would simply go to the court's site. If
- 11 it's only through registration, then I believe it
- 12 would have to go through Ms. Valenti's
- 13 registration.
- 14 So I don't know which it was.
- Q. It varies on whatever circumstance you 15
- 16 just described?
- A. Yeah. It follows the human. So if the 17
- 18 human needs to register, like with PACER for
- 19 example --
- 20 Q. Sure.
- 21 A. -- then it would follow that path.
- 22 If a human does not need to register but
- 23 simply goes to an open court site with the docket
- 24 listed, which is common, then it would follow that
- 25 path.

- Page 146
- Q. So the bot or spider is obtaining access 1 2 to the iCourt portal however Ms. Valenti would
- 3 access the portal?
- 4 A. I think that's fair.
- 5 MR. FETTERLY: Objection; vague and
- 6 ambiguous, overbroad.
- 7 THE WITNESS: Yeah, you know, I don't
- 8 know for sure. But that's what I think would
- 9 happen.
- Q. (BY MS. DUKE) Well, you were saying it 10
- 11 follows the person, so I was just following up
- 12 saying if that's the case, then it would follow
- 13 Ms. Valenti and --
- A. I'd agree. I'd agree. But that, I don't
- 15 know for sure. Based on that basic principle,
- 16 yes, you're right.
- Q. Now, you're aware CNS has not disclosed
- 18 any expert witnesses in this case; is that
- 19 correct?
- A. I'm going to leave that to -- I'm not
- 21 sure. I think we were considering a rebuttal
- 22 witness, but I'm not sure of that either.
- 23 Q. Are you aware of CNS disclosing any
- 24 expert witnesses in this case?
- 25 A. No.

Page 147

- Q. Now, you've talked about -- when you
- 2 talked about your definition of submit equals
- 3 filed, you've referenced a national standard that
- 4 has led you to that conclusion.
- 5 What is the factual basis or
- underpinnings of what you believe to be that
- national standard?
- A. Well, we report on cases filed through
- paper and through e-filing. And the date of
- 10 filing is always the date of receipt in all those 11 states.
- 12 Q. Which courts are you referencing?
- 13 A. All the courts we're covering. So it
- 14 would be all 52 states -- sorry, all 50 states and
- 15 all federal courts.
- 16 Q. And CNS covers all 50 states?
- A. Yes. Not statewide. As I was saying 17
- 18 earlier, there's a real mix. It's just an amazing
- 19 geography out there as people try to switch over 20 to e-filing.
- 21 But we have coverage within each state.
- 22 It doesn't necessarily cover the whole state.
- 23 O. You mentioned California and there being
- 24 a number of different e-filing systems that even
- 25 just the state itself uses, unlike just one
 - Page 148
- 1 uniform e-filing system.
- 2 A. Correct.
- 3 Q. And it sounds like Georgia is the same
- 4 way.
- 5 A. Correct.
- 6 Q. In those instances, whenever you're
- 7 talking about the word "submitted" or the word
- "filed" in all of these contexts, are you saying
- 9 that they all mean the same thing, "submitted"
- 10 equals "filed"?
- 11 A. Yes.
- 12 Q. And that's the case regardless of the
- 13 e-file and serve vendor?
- 14 A. Yes.
- 15 Q. And that's the case regardless of the
- case management system that's being used --
- A. Absolutely. 17
- Q. -- at the court? 18
- 19 A. Yes.
- 20 MS. DUKE: Sara is going to run and grab
- 21 her child, so she'll be hopping on -- you'll see
- 22 her pop on through the thing. That's why it's
- 23 happening that way through the Zoom.
- Q. (BY MS. DUKE) All right. So let's turn 24
- 25 to -- does CNS have a process for monitoring

(41 of 297), Pagas41:1:5297, Gasa524 G697503/196/29265. Pk#Fighty:2/95928agadd ab 297.18

William L Girdner November 9, 2022

- 1 whether civil complaints available in Tyler's
- 2 press review queue are ultimately accepted or
- 3 rejected or transferred to the court's case
- 4 management system?
- A. We have a process for confirming the case 6 numbers.
- Q. What is that process? 7
- 8 A. Well, when we're reporting, for example,
- 9 in a press review queue, as I was saying, there's
- 10 a case ID number. So we report with the case ID
- 11 number.
- 12 And then for our archives, a reporter
- 13 goes back and corrects those case ID numbers with
- 14 the permanent case number.
- Q. Has there ever been a time when -- to
- 16 your knowledge when CNS has reported on a civil
- 17 complaint that was available in Tyler's press
- 18 review queue but had been rejected and not refiled
- 19 or reserved?
- A. I've thought about this. If I can answer
- 21 it this way: I don't agree with the term
- 22 "rejected."
- 23 I will answer your question. There are
- 24 instances where a deputy clerk returns a filing to
- 25 the filer and says, "You need to fix" some things.

- 1 That's true in federal court. It's true in state 2 court.
- 3 There are very rare instances when the
- 4 filer does not either fix the case or refile it.
- 5 It does happen.
- Q. And does CNS do anything about that in 6
- 7 that instance when the document is not
- 8 resubmitted? Is there anything that Tyler does to
- 9 correct the record or to modify its report that
- 10 went out for new case filings?
- A. Not Tyler. I think you --11
- 12 Q. Or not Tyler, CNS.
- 13 A. Yes, we take it out of our archives. We
- 14 take that summary, entry, the whole thing out of
- 15 the archives.
- 16 Q. Is there any report that's made to the
- 17 subscribers as to that, you know --
- A. No. I can answer your question. 18
- 19 Q. Sure.
- 20 A. No. It's very rare, and the answer is 21 no.
- 22 Q. All right. Is there any harm that CNS is
- 23 alleging it has experienced due to the delays it
- 24 alleges are occurring in its access to civil
- 25 complaints that are submitted to Tyler

Page 151

- 1 File & Serve?
- A. I believe the harm is to not only us, but
- 3 the constitution and the openness of the courts.
- That's one reason I have dedicated so much time
- and money to this.
- 6 I think transparency in the courts is
- 7 really important, a hallmark of our democracy.
 - So when I feel that that is being
- smothered or threatened with delay, with devaluing
- 10 of the news of the courts, that is the harm that I
- 11 see. And I think that ultimately harms the
- 12 constitution as well.
- 13 Q. And I think I know what your answer is
- 14 going to be here, but I'll ask the question
- 15 anyway.
- 16 A. All right.
- Q. What length of time would pass or need to 17
- 18 pass for you to believe there is this harm you've
- 19 just described in Idaho?
- A. You asked the question earlier, and I
- said there's no magic number. That's correct. I
- said we need to go through the steps, right?
- Right of access attaches on receipt.
- 24 Do you delay? Yes, you do.
- 25 Do you have an overriding reason?

Page 152

- Do you have a less restrictive
- 2 alternative?

1

- 3 That's how I would answer that question.
- Q. And you participated in answering 4
- discovery in this case, correct?
- 6 A. Yes.
- 7 Q. And you recall providing up to a day or
- 8 so as your response for when you believe, you
- 9 know, you're still within a time frame where
- 10 there's not this harm that you've described?
- 11 A. Yeah, I -- I don't know if -- anyway, the
- 12 answer is a practical one in that I do not think I
- 13 would challenge a court if that was the case.
- 14 It's just not worth it I think is the way to put
- 15 it. It's such an enormous expense and effort. If
- 16 you look at this week alone, the amount of expense
- 17 and effort that's entailed.
- 18 So I do not undertake these cases
- 19 lightly. If a court is providing access to us by
- 20 the end of the day, I see no reason to challenge
- 21 it.
- 22 Q. I think we marked these, CNS's responses 23 from today.
- 24 MS. DUKE: What's our next number, Amy?
- 25 THE REPORTER: 28.

William L Girdner November 9, 2022

- 1 (Deposition Exhibit No. 28 was marked.)
- 2 Q. (BY MS. DUKE) Let me show you
- 3 Exhibit 28. And these are the responses that we 4 were provided today.
- 5 Can you see that okay?
- A. Yeah. Can you make it just a little 6 7 bigger?
- 8 Q. You bet. One moment, I'll just shift it 9 over here.
- 10 All right. How about that?
- 11 A. Better. There. Okay.
- 12 Q. So when I look to this, this is where I'm
- 13 talking about the answer that you just provided 14 today.
- 15 A. Yeah.
- 16 Q. Related to -- you'll see here where it
- 17 says -- where are you? Yeah.
- 18 "Subject to and without waiving the
- 19 objections, Courthouse News typically defines
- 20 'undelayed access' to new public civil complaints
- 21 to mean access shortly after the court receives
- 22 the complaint. Courthouse News considers access
- 23 to new civil complaints delayed when a court
- 24 restricts access and does not make it available to
- 25 the press until some later point in time,

Page 154

- Q. When do you believe, as you've testified
- to earlier, that news becomes stale?
 - A. Overnight. And let me add to that.
- 4 Overnight is the traditional measure and
- 5 reality measure, right? We look at the news at
- 6 night. We watch TV. We read the paper in the
- early morning. We look at late editions in the
- 8 evening, listen to the radio. So news does have a daily cycle.
- 10 However, in the modern internet age, the
- news cycle has been abbreviated, I have to say.
- 12 So even two hours or four hours later is pretty
- 13 late on news.
- 14 Q. Your subscribers -- what are you trying
- 15 to provide your subscribers of the Big Sky Report
- when they sign up for your service?
- 17 A. A window into the court, into its public
- 18 filings and to the -- let me just say this again.
- 19 The journal -- I mean, lawyers such as
- 20 the lawyers in your office, work at the
- courthouse. I think there's a great deal of
- 22 interest in what happens at the courthouse. Not
- 23 only what affects your clients, but also what your
- 24 competitors are doing, what your old friends from
- 25 law school are doing.

Page 156

- 1 typically one or more days after receipt."
- 2 Is that a fair description --
- 3 A. It is.
- 4 Q. -- of Courthouse News's view on delay?
- A. I don't think so. It's what I said 5
- 6 earlier just now, which is that in practical
- 7 terms, we're not going to challenge a court that
- 8 delays -- that provides access on the day of
- 9 filing.
- 10 But under the analysis that I've talked
- 11 about, which I think is the correct analysis, any
- 12 delay beyond receipt needs to be justified. And 13 if it can be, fine.
- Q. All right. Thank you for that. 14
- 15 A. Yeah, you bet.
- Q. With what you've just said, why is that
- 17 your litmus test, or whatever word you want to
- 18 use? Why is that your guide that you'll use as to
- 19 whether or not to pursue any type of alleged
- 20 violation?
- 21 A. We have to make a selection, right? I
- 22 mean, like I said, the investment is enormous in
- 23 this litigation. So I am going to challenge a
- 24 court where the delays are longer than a day
- 25 because of the amount of investment.

Page 155

- I find the reports quite fascinating. 1
- Obviously there's a lot of run-of-the-mill stuff.
- Q. Sure.
- 4 A. But as you noticed, the actions by the
- 5 attorney general were quite interesting. And so
- 6 that -- the interest of lawyers is quite varied,
- 7 but it is deep, if I can answer it that way.
- Q. And when it comes to the Big Sky Report
- 9 and what you're wanting subscribers like my firm
- 10 and others to have, as I understand it, it's an
- 11 access into what's happening in the court system?
- 12 A. Yes. That was the inspiration for
- 13 Courthouse News to begin with. I was looking at
- 14 stacks of paper filings in the Central District of
- 15 California, the U.S. Central District.
- 16 And I looked at that and I thought,
- "There's a lot of stuff in here that's interesting
- 18 that a lot of reporters just blow right past."
- 19 So, yes, that's exactly right.
- 20 Q. And have you had any discussions or
- 21 internal meetings or -- you know, you are the
- 22 boss, so any musings as to whether you're going to
- 23 start, you know, having your reporters check for
- 24 filings every day including holidays and weekends?

A. No. Let me approach this from a little

Page 157

40 (Pages 154 - 157)

25

(43 of 297), Pagas43105297-60805240697003/M6/2025. Pktfigtry: 2/95928 agade 2529718

William L Girdner November 9, 2022

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1 institutions within the state will keep a list of
 1 further back.
 2
         In other words, because e-filing has
                                                           media.
                                                         3
                                                               Q. Are you aware of the state of Idaho doing
 3 opened up a 24/7 window, filing window -- and, for
 4 example, in federal courts, we see those cases
                                                        4 that?
                                                         5
                                                               A. No. In other words -- sorry. I just
 5 when they're filed on the weekends. So we have
                                                           said the state of Idaho. I'm not aware the state
 6 made arrangements, I think you'd call it, or
 7 arranged for coverage, for example, of -- well,
                                                           of Idaho does. Whether individual institutions
                                                           such as the U.S. Attorney in Idaho does, I don't
 8 East and West Coast federal court cases that are
 9 filed after the reports are published.
                                                        9 know.
                                                        10
                                                               Q. And so in the terms of what we're talking
10
         I can't say in advance whether we would
                                                       11 about here with the First Amendment, is this a
11 do that with the Idaho state courts. I'm not
12 sure. Because -- you know, there's a balance,
                                                       12 press issue, a public issue, or both?
                                                               A. I would say it's both.
                                                       13
13 right?
14
         How much is filed after hours?
                                                       14
                                                               O. And explain why.
15
         What is the nature of litigation?
                                                        15
                                                               A. Yeah, we as reporters stand in the shoes
                                                       16 of the public. I just believe that. We represent
16
         And how much does it cost to pay a
                                                           the public. But I don't put the press ahead of
17 reporter to monitor the court there?
         "Musings" is the word that Judge Rice
                                                           the public or above the public.
18
                                                       19
                                                                  I think, you know, the courts are pretty
19 used when she came on the bench, in ruling on her
   case. That case is stuck in my mind.
                                                       20 interesting places. Just give me a moment. It
                                                           serves the court and it serves our democracy if
21
      Q. It's a good word.
22
                                                           the courts are better understood.
      A. Yep.
                                                       23
23
      Q. How does CNS define what "press" is?
                                                               O. Is CNS, in this lawsuit, asserting that
                                                           immediate access to newly filed -- strike that.
24 What is press at CNS?
                                                       24
                                                       25
                                                                  Is CNS, in this lawsuit, asserting that
25
      A. Yeah, I saw that on the topics. It's
                                               Page 158
 1 kind of a tough one these days. But two-part
                                                        1 complaints that are submitted to Tyler in File &
 2 definition. One is in general, a person who is
                                                        2 Serve, the only way for the Idaho courts to
 3 reporting on current events to the public through
                                                        3 satisfy the First Amendment would be to make those
 4 whatever means.
                                                        4 immediately available?
 5
          But there's also a practical side to it,
                                                        5
                                                                 MR. FETTERLY: Objection. It's vague and
 6 which is that most court public information
                                                        6 ambiguous, overbroad.
 7 officers, for example, or as we talked about, the
                                                                 THE WITNESS: We have never tried to tell
 8 U.S. attorney general, will have a press list.
                                                        8 a court how to provide access. And I would not
 9 There's a list of media members that they want to 9
                                                          presume to.
10 send out announcements to.
                                                        10
                                                                 What we will say is that if you're
11
          So it's -- there is no one clear register
                                                        11 holding up access beyond the point of receipt, you
12 or index of who a member of the media is. It's
                                                        12 need to have a pretty darn good reason and no
   pretty broad.
                                                        13 other alternative.
       Q. Do you know if Idaho has any type of
14
                                                              Q. (BY MS. DUKE) Have you learned in the
                                                       14
15 definition of the press in Idaho?
                                                       15 cases you've had across the country whether there
       A. I don't think it does.
16
                                                       16 are, in fact, pretty darn good reasons or another
17
       Q. Do you know if Idaho has any type of list 17 reasonable alternative?
18 like what you're talking about as to members of
                                                              A. Well, other reasonable alternatives, in
19 the press that would receive certain
                                                        19 my view, pretty easy, yes. There are many
20 announcements?
                                                       20 reasonable alternatives -- or less restrictive, I
21
       A. Right. I heard you ask Cathy that. I've
                                                       21 think, are the words used.
22 never heard of a state keeping such a list
                                                       22
                                                                 We were going through this today in
23 of -- I'm not saying it doesn't happen, but I've
                                                       23 our -- in the deposition about California. And I
24 never encountered it.
                                                       24 was saying then, I'll say now, the way in
25
          What I have encountered is individual
                                                       25 which -- the different ways in which those courts
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41 (Pages 158 - 161)

Page 161

(44 of 297), Paggs441.952.27-60865246697503(116/21265-7-) ktffetry:2195928 apage 45 29718

William L Girdner November 9, 2022

- 1 are providing access on receipt is -- I use the
- 2 word "myriad," and it is truly myriad. None of
- 3 them are quite identical, you know. I guess the
- 4 Tyler press queues are all pretty similar, but
- 5 even then there's a few little variations.
- 6 Q. What about pretty darn good reasons for 7 not immediate receipt? Have you heard of any of 8 those?
- 9 A. Again, I'm going to step back, and I'll 10 do my best to drill down.
- When I write my letters asking for
- 12 access, I always acknowledge the importance of
- 13 what the clerks do. I think it's very important
- 14 to docket and keep the court in good order. I
- 15 agree with that.
- 16 I'm just saying we're not in conflict.
- 17 We can both do our jobs. We can report on the
- 18 court and the deputy clerks and court officials
- 19 can do their job, which is an important one,
- 20 absolutely.
- 21 Q. So you would agree the courts have an
- 22 important job to do?
- A. Yes, I would.
- Q. And that the court clerks have an
- 25 important job to do?

1 A. I don't quite know what that means.

- 2 Yeah, I don't know.
- 3 I think it's important that the system
- 4 has integrity. I think the courts that provide
- 5 same day -- I'm sorry, that provide access on
- 6 receipt have integrity. It's been proved
- 7 throughout the U.S., including the court we're in,
- 8 in the U.S. District Court in Oregon.
- 9 The clerks, of course, are a part of that
- 10 institution and help support its strength as an
- 11 institution.
- 12 Q. And so what I was asking is that
- 13 certainly court clerks are a part of upholding the
- 14 strength of the judicial system.
- 15 A. Oh, yes, indeed.
- 16 Q. And part of what they're charged with is
- 17 to ensure that certain documents are included in
- 18 court files.
- 19 MR. FETTERLY: Objection; vague and
- 20 ambiguous, overbroad, lacks foundation.
- 21 THE WITNESS: They're charged with
- 22 putting the -- including the document -- I'm
- 23 sorry. Maintaining a case management system and
- 24 creating a docket is how I would put it, in a very
- 25 old-fashioned way.

Page 162

Page 164

- 1 A. Absolutely.
- 2 Q. And what do you believe is the important
- 3 job that the Idaho clerks have to do in our state
- 4 court system?
- 5 A. Well, as I've just said, they keep the
- 6 courts -- they keep the business of the courts in
- 7 order, in regular order. They keep track of
- 8 things.
- 9 Q. And I know when we were talking earlier
- 10 about the importance of reporting on what's going
- 11 on with the courts and whatnot, and I know that
- 12 you were getting a little choked up.
- 13 A. Yeah.
- Q. And this is probably not a bad time in
- 15 our lives to all be a little choked up about
- 16 what's happened to the country in the last four 17 years.
- 18 A. Absolutely.
- 19 Q. And I'm assuming that the integrity of
- 20 the judicial system is of utmost importance to you
- 21 as a member of the press?
- A. Of course.
- 23 Q. And I'm assuming that you appreciate that
- 24 the court clerks are a part of upholding the
- 25 integrity of the judicial system in Idaho?

- 1 Q. (BY MS. DUKE) Sure. And that's an
- 2 important function of their jobs is to maintain a
- 3 case management system and create a docketing for
- 4 each case?
- 5 A. Yes, indeed.
- 6 Q. And so then obviously preserve those
- 7 records and keep those records undisturbed, I
- 8 guess, or --
- 9 A. Safe and intact.
- 10 Q. Sure.
- 11 A. Yeah. My point all along is we can do
- 12 it. We can both do our jobs and not threaten each
- 13 other.
- 14 Q. If a -- and that's what I want to drill
- 15 down into a little bit. And that is if -- you
- 16 know, in trying to let you both do your jobs, why
- 17 is a clerk's confirmation of a few items before
- 18 accepting the transfer of a complaint from the
- 19 file and serve to the case management system
- 20 somehow contradictory to your goals to provide,
- 21 you know, information of what's going on in the
- 22 court system?
- 23 MR. FETTERLY: Objection; vague and

24 ambiguous, overbroad, lacks foundation.

25 You may answer.

Page 165

Page 163

42 (Pages 162 - 165)

William L Girdner November 9, 2022

- 1 THE WITNESS: It's a question of timing.
- 2 If we're able to see the cases at the same time
- 3 they're working on them, in other words, after
- 4 they're received, then there's no conflict. They
- 5 can do their -- I mean, they do their jobs anyway.
- 6 I'm saying there's no need for a conflict.
- 7 And I think you're asking about, well,
- 8 what's -- essentially what's the big deal of
- 9 waiting, maybe, if I can phrase it that way. And
- 10 it's time. It's the passage of time. That's the
- 11 problem.
- 12 Q. (BY MS. DUKE) And that's the passage of
- 13 time in the state of Idaho from when it's
- 14 submitted to Tyler File & Serve and then
- 15 transferred to the case management system and
- 16 filed?
- A. I would put it until when the processing 17
- 18 is completed, that passage of time. So from the
- 19 time of submission to the completion of
- 20 processing.
- 21 Q. And you understand the completion of the
- 22 process is when it's filed and docketed into the
- 23 case management system?
- 24 A. I'm not agreeing with "filed" because
- 25 we've discussed this quite a bit.

Page 166

- But I'm agreeing with when it's 2 transferred into the case management system.
- Q. How is it different when I looked
- 4 to -- because I asked Ms. Valenti this, and I
- 5 asked you this, which is of course we were not
- 6 going to, in the olden days, ask the runners,
- 7 "Hey, what's in your hand? What are you about to
- 8 file?"

1

- 9 Why under the e-filing system is it now
- 10 okay for you to want those documents before
- 11 they've been accepted and entered into the court's
- 12 management system?
- 13 A. Yeah, accepted, I think, on the clerk's
- 14 side or on the e-filer -- yeah, there's different
- 15 words. I've heard docket -- docketing called
- 16 "creation," okay? Some of the clerks are in
- 17 charge of creation. But I would call it a docket,
- 18 right?
- 19 And in the past, what you call
- 20 "acceptance" is -- I would call "docket." And in
- 21 the past, journalists had access to the new
- 22 complaints when they crossed the counter before
- 23 they were docketed. And really, that's what I'm
- 24 asking for here.
- 25 And I think I said something, possibly in

Page 167

- 1 a declaration, I'm not sure. But in our Eighth
- 2 Circuit arguments, Judge Bobby Shepherd
- 3 said -- because he was a practitioner. And he
- 4 said he remembers when somebody brought a case
- 5 into the courthouse, it crossed the counter, and
- 6 it was public. People could walk in and look at
- it. And that's exactly right.
- 8 And then the docketing took place,
- afterwards.
- 10 Q. Well, and so that's what maybe we're
- getting a little hung up on that word, then.
- And so what to you is docketing, then, in 12
- 13 the state of Idaho?
- 14 A. Processing.
- 15 MR. FETTERLY: Objection; vague and
- 16 ambiguous, overbroad as to time.
- Q. (BY MS. DUKE) So -- and this is where in 17
- 18 the old days, like the example I gave when I was a
- 19 runner, it only passed the counter of the court
- 20 once the court clerk looked and said, "Yep, you're
- 21 in the right place, Ms. Duke. You handed me the
- 22 right stuff. You have the signatures you need.
- 23 You have the filing fee you need. Fine. In it
- 24 goes."
- 25 And they would stamp it, take it, and

Page 168

- 1 then I would hand them my next document in a
- 2 different case, or leave if I didn't have any
- 3 others.
- A. Sure. So anticipating where you're
- 5 going, the interface for the e-filer does all that
- 6 and more. Requires payment. You have to fill in
- 7 the parties, the nature of the case, attach your
- PDF, and they say, "Pay."
- Q. But do you know when the courts actually
- 10 receive the money that has been placed to Tyler's
- 11 File & Serve?
- 12 A. You know, it's interesting. That's a
- 13 policy issue. Because some courts, like Florida
- 14 courts are very money oriented. And they take the
- 15 money right away at submission. So it's a policy
- 16 choice within the courts. Because they want the
- 17 float, you know.
- 18 Q. They take it right away from Tyler
- 19 File & Serve even though it hasn't been
- 20 transferred?
- 21 A. Sorry I interrupted you.
- 22 No. They're a Granicus court. And they
- 23 take the money and put it in the bank as soon as
- 24 the filing is submitted so they can get the
- 25 interest.

(46 of 297), Pagas461.052.27-6086524-669363/116/2025-Pktfietry: 219592 2 apade 45 39718

- William L Girdner November 9, 2022 Q. Right. But my question was related to MS. DUKE: No problem. I'll just ask all 2 Idaho and Tyler. 2 the case-cracking questions right now. Just A. Fair enough. 3 3 kidding. Q. Do you know whether Idaho's courts -- and 4 MR. FETTERLY: Bill, I instruct you not 5 I should have limited it to that because in all 5 to answer until I return. 6 fairness, I said the courts. I meant the Idaho MS. DUKE: You know I'm joking. I'll get 7 courts. some hot water. How does that sound? 8 So do you know when the Idaho courts 8 MR. FETTERLY: Thank you. I appreciate 9 actually receive the money that has been submitted 9 that. 10 by the person who wants the document filed -- do 10 (Brief pause in the proceedings.) 11 you know when Idaho's courts actually get that 11 MS. DUKE: Perfect. We can go back on 12 money? 12 the record. 13 A. I don't know for Idaho specifically. 13 THE REPORTER: We weren't off the video, 14 Let me put it this way: I believe I 14 Keely, so go ahead. 15 know the usual pattern, but there's variations. THE VIDEOGRAPHER: We never went off the 15 16 So maybe I'll just say that. 16 record. I actually don't know because there are 17 17 MS. DUKE: Oh, I'm sorry. I feel 18 differences. Some people take it right away; some 18 terrible you guys were having to sit there. Sorry 19 people take it later. 19 about that. I should have said "Off the record" 20 O. Sure. 20 real quick. 21 A. In other words, some people settle later. 21 THE REPORTER: No problem. 22 So the filer puts in a credit card number and the 22 MS. DUKE: Okay. Well, we'll forge on 23 amount and then file -- and then submit it. 23 here. 24 Right? 24 Q. (BY MS. DUKE) So let me pull up 25 So then the -- in the case, in some 25 Ms. Valenti's declaration we talked about Page 170 Page 172 1 cases, that settlement is made where you grab the 1 yesterday. 2 money from the credit card company right away. 2 All right. I'm going to pull up 3 In other courts, it's at the point of 3 Exhibit 22, and I'll make it viewable here for 4 where the case goes into the e-file -- the case 4 you, Mr. Girdner. 5 5 management systems. A. Thank you. Q. And in Idaho, you just don't know when 6 Q. Give me one moment. Okay. Can you see 7 the money changes hands; is that fair? 7 that okay? A. Yeah. One or the other, yeah. 8 A. Yeah. Q. So we talked to Ms. Valenti -- and I can 9 Q. Okay. This was the declaration that she 10 submitted in support of the preliminary 10 pull up her declaration, so just give me one 11 moment. 11 injunction. 12 As you know, we chatted with her about 12 A. Okay. 13 her declaration and the spreadsheet that she was 13 Q. And we had talked with her in her 14 deposition about this chart. And I'll blow that 14 using. 15 A. Yep. 15 up here. Q. Let's get there. 16 Okay. So we had chatted with her about 16 17 A. I'm going to close the door to the 17 this. And I want to talk to you about it. 18 office. 18 Do you have an understanding of who 19 created this spreadsheet for Ms. Valenti to use? 19 Q. No problem.
- MR. FETTERLY: And, Keely, while you're
- 21 doing that, I need to step away for just one
- 22 minute. I don't think we need to go take a break.
- MS. DUKE: No problem.
- MR. FETTERLY: Give me one minute. I'll
- 25 be right back.

Page 171

- 20 A. I do.
- Q. And who did?
- A. Me and Jimmy.
- Q. When did you first put this together for
- 24 tracking?
- 25 A. This is a model we use for tracking.

Page 173

44 (Pages 170 - 173)

(47 of 297), Pagasto 1.05297-6086524069763116/2025-Dktffetry:2195928apaga 4639718

William L Girdner November 9, 2022

- 1 We've had it five, six years, probably longer.
- 2 Q. A model that's used regardless of the 3 jurisdiction?
- 4 A. Yeah.
- 5 Q. This was just one provided to Ms. Valenti
- 6 because Idaho came on your radar?
- 7 A. A form, I would call it, for tracking.
- 8 Q. A form for tracking?
- 9 A. Yeah.
- 10 Q. And this form was provided to Ms. Valenti
- 11 to start tracking certain items that you included
- 12 on this form?
- 13 A. Yeah. I mean, she's meant to track all
- 14 general civil filings, I believe, all general
- 15 civil complaints. That's pretty broad, but
- 16 it's -- yeah, anyway, yes.
- 17 Q. Who came up -- if we look at the columns,
- 18 it says "Date," "File," "Case Number," "Nature of
- 19 Case," "Date Docket Online," "Date Available,"
- 20 "Lawyer Filed," "Which Court," and "Notes," and
- 21 I'll stop there.
- Who created those columns?
- 23 A. I'd say I -- I'm willing to take
- 24 responsibility for it. I approved it, and I
- 25 probably wrote some of the words.

- 1 would lead you to feel that there's some
- 2 unreasonable delay?
- 3 A. No, I think we would. Those are next
- 4 day, I believe. One-day delay. Do you see the
- 5 column?
- 6 Q. Sure.
- 7 A. Zero means we saw it on the day of
- 8 filing. One means one-day delay. And then below
- 9 that I think it's a three. I can't see very well.
- 10 But red is past one day.
- 1 Q. And if I look at those -- and I can take
- 12 that third case down -- it says there was a
- 13 one-day delay by date in calendar days and by
- 14 court days, so it must have not gone over a
- 15 weekend. I'm assuming that's kind of what we're
- 16 talking about there.17 A. Yeah. The weekends will change the
- 18 color, if you will, of Friday filings, depending
- 19 on whether they use calendar days or court days.
- Q. If I use calendar days and I have a
- 21 filing that's Friday at, let's say, 4:45, then I'm
- 22 going to have a delay, per this chart, of what,
- 23 two or three calendar days?
- A. I think it's three, until Monday.
- Q. Okay.

Page 174

Page 176

- 1 Q. And then she said there were some
- 2 calculations that were built into it?
- 3 A. Right. Yes.
- 4 Q. That would then provide the delay
- 5 and -- delay by date and calendar days and delay
- 6 by court days. Is that also you?
- 7 A. No. Those are spreadsheet formulas. I
- 8 don't know how to do that. Jimmy does that.
- 9 Q. But did you provide the parameters, "I
- 10 want calendar days, and I also want court days"?
- 11 A. Yes.
- 12 Q. Now, as we talked earlier about court
- 13 days, and when -- I don't want to use the wrong
- 14 word, so obviously correct me if I do.
- 15 A. Okay.
- 16 Q. But when the delay becomes such in CNS's
- 17 mind that there's something that CNS is going to
- 18 do about it, we've talked about that
- 19 within-the-day concept. Fair?
- 20 A. Fair.
- Q. And so are any of the ones that are in
- 22 yellow, are those within that time frame that
- 23 would be -- I don't want to say "acceptable"
- 24 because I don't think that's what you're
- 25 necessarily saying, but those are not ones that

- 1 A. Because that's, in fact, when we can see
- 2 it. It's Monday.
- 3 Q. Right. And then a delay by court days
- 4 would be what, one?
- 5 A. One day. One. A case filed on Friday,
- 6 seen on Monday, no intervening -- well, there
- 7 couldn't be a holiday on a Monday --
- 8 Q. Sure.
- 9 A. But so, yes, that would be a one-day
- 10 delay.
- 11 Q. In the court's assessment of this, is it
- 12 your position that calendar days should be used
- 13 rather than court days?
- 4 A. Yes, it is. However, the percentage
- 15 of -- the number of cases seen on -- that are
- 16 delayed in one form or another -- let me see if I
- 17 can say this.
- The answer is yes. I think calendar days
- 19 should be used because time passes in calendar
- 20 days. And because some -- again, New York.
- 21 There's this huge argument about, "Oh, my gosh.
- 22 You expect us to work on weekends?" which is not
- 23 what we're asking for.
- But to avoid that kind of dispute, we
- 25 say, "Look, we can measure either way."

Page 177

45 (Pages 174 - 177)

(48 of 297), Pagas 481.052-97-60565-24-669363/116/2025-Pktfietry: 219592 2 apage 48 of 39718

William L Girdner November 9, 2022

- 1 Q. Meaning you take your pick, court, you
- 2 can do it by court days or by calendar days?
- 3 A. No. I think in the judging or in the --
- 4 you know, in seeking a determination on the
- 5 constitutionality of these delays, we give you the
- 6 alternative, and the judge is the alternative.
- 7 Q. Oh, I see.
- 8 A. Of measuring it either way.
- 9 Q. So --
- 10 A. Because the case number -- the percentage
- 11 of cases seen on the day of filing, they're
- 12 normally almost zero. It's usually the same
- 13 percentage.
- 14 Q. So in the context of this case, that
- 15 would mean, "Judge Nye, we're providing you this
- 16 spreadsheet. And it's up to you, Judge, to
- 17 determine whether you're going to consider
- 18 calendar days or court days"?
- 19 A. No, I don't want to tread on the -- what
- 20 the lawyers will argue, of course.
- I am telling you the reality, which is
- 22 that these are two alternate ways of measuring the
- 23 delays, but they yield the same result in terms of
- 24 cases that are delayed. But -- percentage of
- 25 cases delayed, shall I say?

1 and any delay beyond that needs to be justified.

- 2 So it's pretty close to what you're saying.
- 3 Q. When saying "Date Filed" in that first
- 4 column, what I understand that to mean is again
- 5 that fits with your definition of what filed is,
- 6 and that is the date it was submitted to Tyler
- 7 File & Serve?
- 8 A. Yes.
- 9 Q. Is that fair?
- 10 A. Yes. We've gone round and round quite a
- 11 bit on that.
- 12 Q. Right. I'm just making it clear on this
- 13 spreadsheet, that's what that means?
- 14 A. Yes.
- 15 Q. And then the case number is the actual
- 16 case number assigned by the court to the case?
- 17 A. Yeah, the permanent case number.
- 18 Q. And the nature of the case is just a few
- 19 words' description of the case, the type of case?
- 20 A. Yeah. I think that would normally be a
- 21 docket item, right? The nature of the case, yeah.
- 22 And I think that's probably on the interface when
- 23 the filer files the case. They check off a
- 24 certain -- it's usually a drop-down menu with
- 25 certain categories. And these would come from

Page 180

- Page 178
- 1 Q. A third alternate way to, I guess, 2 calculate this alleged delay would be to count
- 3 court hours versus non-business hours, correct?
- 4 A. We would not agree with that.
- 5 Q. And why not?
- 6 A. The court hours are not the way time
- 7 passes. It doesn't matter to most people. And it
- 8 doesn't assess -- court hours are not real time.
- 9 They're the particular hours set by the clerk,
- 10 which vary.
- 11 And if I can step back just a bit, we're
- 12 not asking clerks to docket faster. We're asking
- 13 them to just let us see the cases. So the court
- 14 hours are a function of the docket.
- 15 Q. Well, but that's where the rubber kind of
- 16 meets the road on this case, which is you are
- 17 asking and argue to see something that has not yet
- 18 been filed and entered into the court system,
- 19 whereas you're saying, "No, when it's submitted to
- 20 Tyler File & Serve, it should automatically be
- 21 considered filed and available for us to see."
- 22 A. Pretty close. I mean, I'm saying yes,
- 23 that is what I've been saying, that when it's
- 24 submitted, it's filed. And that if there's
- 25 delay -- that the right of access attaches then,

- 1 that drop-down menu.
- Q. Got it. And then "Date Docket Online,"
- 3 tell me what that column represents.
- 4 A. So that's when Cathy Valenti can see the
- 5 docket online.
- 6 Q. And do you know what it is she's seeing
- 7 that encompasses the docket?
- 8 A. I think she testified yesterday a docket
- 9 is plaintiff, defendant, nature of case, case
- 10 number, filing party or filing lawyer.
- 11 Q. And then "Date Available," what's your
- 12 understanding of that column?
- 13 A. When she can see the actual full text,
- 14 the complaints of.
- 15 Q. Meaning the complaint is actually
- 16 available through the iCourt portal?
- 17 A. Correct. Or available through any means,
- 18 right? That's the only means we have.
- 19 Q. Got it. Okay. But in this instance
- 20 through the iCourt portal?
- 21 A. Yes, indeed.
- Q. And then "Lawyer Filed" is just
- 23 representing whether it is filed by an attorney or
- 24 pro se, I'm assuming?
- 25 A. I think that's -- that is correct.

Page 181

46 (Pages 178 - 181)

William L Girdner November 9, 2022

- 1 Q. "Which Court" being the county in which
- 2 it's filed, or district?
- 3 A. Yeah. Ada, for example, or -- yeah.
- 4 Q. And then what was the "Notes" column
- 5 intended to reference?
- 6 A. Just anything unusual, like for what
- 7 would be the equivalent of an asterisk. I don't
- 8 know. Just anything unusual.
- 9 Q. And then we have this column that does
- 10 not have black over it. And I think that's just a
- 11 repeat of the first column brought over to this
- 12 chart that then calculates either calendar day or
- 13 court delay -- or court delay, alleged delays.
- 14 A. I believe that's correct. Yeah, I
- 15 believe that everything along the black line would
- 16 be what's there, the form that Cathy's entering
- 17 into. And then everything to the right of that is
- 18 a product of the spreadsheet formula.
- 19 Q. And the formula that Jimmy created?
- A. Yeah, correct.
- Q. Who -- oh, go ahead.
- A. Well, we have another bureau chief who
- 23 can also write in this language. And he
- 24 also -- the man's name is Jody. But he has -- he
- 25 uses Google spreadsheets and he calculates the
 Page 182

1 red. So I'm not sure what it means.

- 2 Q. Right. And then red is three days or 3 more.
- 4 A. Apparently, yeah.
- 5 Q. Do you know why that was the color coding
- 6 system that CNS has argued before Judge Nye?
- A. Normally it's just -- you know, as I say,
- 8 Adam designs his spreadsheets a little bit. It's
- 9 just a way to indicate visually and clearly which
- 10 cases are -- we can see on the day of filing and
- 11 which cases are delayed by one day and which cases
- 12 are delayed by more than one day.
- 13 The orange is -- I'm not sure why we're
- 14 using it here. Normally it's just green, yellow,
- 15 and red.
- 16 Q. And why even use -- like, assume you're
- 17 just using green, yellow, and red in this.
- 8 A. Okay.
- 19 Q. Why have yellow in there at all?
- A. It's visual, right? We're calculating
- 21 statistics. Statistics are numbers on a piece of
- 22 paper. The visual gives you a visual impression
- 23 of the same numbers.
- Q. But is it CNS's position that if it's
- 25 yellow, that still would be something that's

Page 184

- 1 formulas on Google spreadsheets.
- 2 I'm not sure why I'm adding that. I'm
- 3 trying to say it's not this magic language that
- 4 takes a big specialist. The spreadsheet formulas
- 5 are quite commonly known by people working in
- 6 offices. I don't know.
- 7 Q. I don't either. I have other people that
- 8 help me with those things.
- 9 A. Exactly.
- 10 Q. And tell me what -- by providing this to
- 11 Judge Nye -- well, actually before I ask that, let
- 12 me first ask, who came up with the color coding of
- 13 green, yellow, orange, and red?
- 14 A. I did, like a traffic light.
- 15 Q. Okay. And tell me -- I'm assuming green
- 16 means we don't have an issue with access, timing
- 17 of access to that?
- 18 A. Yeah. Essentially, yes, it's good
- 19 access.
- Q. And yellow means what?
- 21 A. Delayed for one day.
- Q. And orange means what?
- 23 A. That's interesting. Apparently -- I'm
- 24 not sure what the orange means here. It appears
- 25 to be for two days, but normally that would be

- 1 actionable in the state of Idaho under the First
- 2 Amendment?
- 3 A. You know, according to what we said
- 4 earlier, if it's delayed and if there's no
- 5 justification for it, yes.
- 6 Q. And are you able to think of any
- 7 justifications that would be reasonable to
- 8 consider that would justify the delay?
- 9 A. For example, the computer. For
- 10 example -- I'm not sure if this is helping us out
- 11 or not. But in one of our filings, I think it was
- 12 in Oregon, the federal courts were updating their
- 13 software. Okay? So for a day or two, we couldn't
- 14 see our own filings online. That's perfectly -- I
- 15 don't see that as violating the First Amendment.
- 16 Q. Any other justifications that you
- 17 wouldn't see as violating the First Amendment?
- 18 A. You know, the variations in
- 19 circumstances, I'm honestly not trying to be
- 20 vague, but to try to say this is the full universe
- 21 of things that could go crazy.
- I went to the state court in Iowa that
- 23 was on a little island in a river, and the
- 24 courthouse got flooded. All the records were25 flooded. They were still drying them out a year

Page 185

Page 183

47 (Pages 182 - 185)

(50 of 297), Pagas501.95297.6086524069363/116/2025-Pktfiptry:2195922apa504539718

William L Girdner November 9, 2022

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Page 186

- 1 later. You know, the amount of things that can
- 2 happen to people and systems is really quite
- 3 incredible.
- O. So the date filed, which we know through
- 5 your testimony today means the submission date to
- 6 file and serve in that first column, is that
- 7 information -- do you know exactly where
- 8 Ms. Valenti obtains that information to fill into
- 9 that code?
- 10 A. I think what she testified -- and I think
- 11 is correct -- is from the file stamp.
- Q. All right. And is it your 12
- 13 understanding -- you know, I've been produced
- 14 multiple of these various --
- A. Yeah. 15
- 16 Q. -- charts. I'm assuming your answers
- 17 would be the same to any of them. I don't need to
- 18 go through each and every one that we've been
- 19 provided; is that fair?
- 20 A. That is fair. My answer would be the
- 21 same for each of them.
- 22 Q. Thank you for shortening that up for all
- 23 of us.
- 24 A. Yes, indeed.
- 25 Q. Now, you've mentioned a couple of
- 19 Mexico made a report to the supreme court in
- 20 Idaho -- I mean, sorry, in New Mexico, in which he

A. So, you know, in -- Tigera is operating

And then Montana is using -- I can't

Q. Now, when we turn to Tyler, you've made

What are you basing that testimony on?

Emails from Tyler representatives in

And then Director Artie Pepin in New

remember, but it's a really small one, as far as I

10 some representations that Tyler has provided press

know. They're national, but as far as I know,

8 they don't have offices in Idaho, for example.

11 review queue at no cost to courts that have

A. Okay. Emails from clerks and

conversations with clerks in California.

2 in Utah. That's their file system. I think 3 that's the state next door -- yeah, that is the

state next door.

12 requested it.

17 Georgia.

- 21 listed in his report Georgia, Nevada, and I
- 22 believe California, saying that Tyler was
- 23 providing the press review queue in those states
- 24 at no -- I believe he used the words "at no cost."
- 25 Q. Do you know what it is Tyler provided at

Page 188

- 1 different courts that have not a Tyler press
- 2 review queue. They have either generated their
- 3 own or they're with a different company.
- 4 A. Correct.
- Q. Are you aware of what file and serve
- 6 companies there are available to the Idaho courts
- 7 in the state of Idaho?
- A. You're asking me a very broad question,
- 9 but I'm happy to give you a broad answer. There
- 10 are a lot of e-file vendors. I can list some for
- 11 you. There's -- File & Serve Express is a pretty
- 12 small one.
- 13 There's Granicus.
- 14 There's Tigera.
- Montana -- oh, yeah, Tyler -- not Tyler. 15
- 16 Thomson Reuters has developed its own e-filing.
- 17 And there's, like, ImageSoft.
- 18 There's -- there are tons of small ones
- 19 out there too, in addition to all the homegrown.
- Q. And my question, though, is are you aware 20
- 21 of any of those doing business in the state of
- 22 Idaho at all?
- 23 A. No. No. They're doing business
- 24 nationally.
- 25 Q. Sure.

- 1 no cost in those states?
- 2 A. Press review queue.
- 3 Q. Do you know whether that included a
- 4 subscription for the press review queue?
- 5 A. Oh, you mean a payment to Tyler?
- 6 Q. Correct.
- 7 A. No, I don't think it did.
- 8 Q. Or what I'm saying is in addition to
- providing access to it, I'm doing it separately.
- 10 A. Yeah.
- Q. Are you aware of whether there's a 11
- 12 subscription cost to the Tyler press review queue?
- 13 MR. FETTERLY: Objection; vague and
- 14 ambiguous as to --
- 15 THE WITNESS: Yeah, I want to answer your
- 16 question. I'm just confused by it. Who is paying
- 17 the subscription, if I can ask?
- Q. (BY MS. DUKE) Well, it would be the
- 19 courts. Are you aware of Tyler telling the
- 20 courts, "You're going to have to pay a
- 21 subscription cost to use this in your state"?
- 22 A. Yes. Subsequently, yes.
- 23 Q. Okay. And what have you learned in that
- 24 regard?
- 25 A. Well, they've set a number of different

Page 189

48 (Pages 186 - 189)

(51 of 297), Paga 511.5297-6080524069703416421265. Pkffietry: 219922apa 51 56 29718

William L Girdner November 9, 2022

- 1 fees, all right? So I think at the beginning they
- 2 were asking for 200,000 a year.
- 3 Q. When you say "they," you mean Tyler?
- 4 A. Yeah.
- 5 Q. Okay. Go ahead.
- 6 A. They're now settled on a statewide press
- 7 queue for 108,000. And referring to Pepin again,
- 8 Director Pepin who said on the witness stand, "I
- 9 bargain, negotiate with Tyler about everything."
- So I think that they're on a 108,000 on a
- 11 statewide basis is the coming-out price, if you
- 12 know what I mean, the offering price from Tyler,
- 13 but I believe that -- well, I think that amount
- 14 would be subject to negotiation.
- 15 Q. When did you first learn about this 16 108,000?
- 17 A. It was a contract in -- I'm not sure
- 18 about the order. Can I give you just a couple
- 19 instances? There's a -- well, there's a contract
- 20 for statewide press queue in Texas, which is the
- 21 home base for Tyler, right? They dominate that
- 22 state, and that's where they're based, with the
- 23 director of the office of court administration for
- 24 108,000. That's a public record in the federal
- 25 record.

1 asking. What they'll settle for, for example, in

- 2 negotiating for a statewide contract from -- for
- 3 the case -- for the E-File & Serve and the case
- 4 manager system, I don't know if they'd throw that
- 5 in. That's a pretty common tactic for people
- 6 trying to sell something.
- 7 So all I'm saying is I've heard they're 8 asking that, yes.
- 9 Q. And you don't know whether they would
- 10 come off that or not in the state of Idaho; is
- 11 that correct?
- 12 A. I don't.
- 13 Q. And so at this point, knowing what you
- 14 know, you would not represent to Judge Nye that
- 15 Tyler does not charge any cost for the press
- 16 review queue, correct?
- 17 A. I would say they're asking -- my
- 18 understanding is they're now asking 108,000 a
- 19 year. Whether you would end up paying that, I
- 20 don't know.
- 21 Oh, and I should add that the -- there is
- 22 an alternative, which is Auto-Accept, which is
- 23 free.

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- 24 Q. I'm going to talk about Auto-Accept here
- 25 in a second.

Page 190

Page 192

- 1 Q. But when did you learn of that?
- 2 A. I'd say four or five months ago, maybe
- 3 six. That litigation is actually pretty recently,
- 4 now that I think of it. So two or three months 5 ago.
- 6 Q. In the last few months?
- 7 A. Yeah, fair.
- 8 Q. Was that the first you'd ever learned of
- 9 the 108,000?
- 10 A. No, they're -- that fee, I believe that
- 11 came -- let me just think if it came up in Oregon 11
- 12 I've heard the fee mentioned elsewhere. I can't
- 13 place it now.
- My conclusion is that that's their common
- 15 coming-out price.
- 16 Q. So when you filed your declaration with
- 17 the court, that's obviously not information you
- 18 had at the time?
- 19 A. I'd have to see what I said, but I said
- 20 it was offered for free, and that's correct. It
- 21 was offered for free.
- Q. And you've now since learned that it is
- 23 not offered for free?
- A. You know, as I say, I think
- 25 that's -- I've learned that's the price they're

- A. Yeah, okay. All right.
- 2 Q. Any other court -- you think maybe New
- 3 Mexico, maybe Oregon -- where you learned about
- 4 the \$108,000 fee? And it sounds like it was even
- 5 higher at one point, but Tyler came down to, it
- 6 sounds like, 108,000 as what you're calling it, an 7 opening price.
- 8 Any other jurisdiction that you've heard
- 9 that or learned that in?
- 10 A. The 108,000, no.
 - Q. You certainly have heard it in our case,
- 12 correct?
- 13 A. Yes. I think so.
- 14 Q. In the filings that we provided to
- 15 Judge Nye?
- 16 A. Yeah. That sounds right. I'm very
- 17 familiar with the number, okay? That certainly
- 18 rings a bell.
- 19 Q. All right. So then let's turn to
- 20 Auto-Accept. What is your understanding of
- 21 Auto-Accept? Is that a separate application or
- 22 program? Or what is it through Tyler, as you
- 23 understand it?
- A. I -- well, again, if I can step back just
- 25 a bit. And I'll answer your question.

Page 193

49 (Pages 190 - 193)

William L Girdner November 9, 2022

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15 today.

- The state courts in Vermont switched over 2 to Auto-Accept from File & Serve within three 3 weeks. So I think it's easy to switch over and 4 integrate into the current system in many states, 5 which is where there's a clerk review first before
- 6 the case goes into the case management system. 7 So whether it's a separate application, I 8 doubt. I think it's probably a variation on the 9 e-file -- on the file and serve is what I suspect.
- Q. That's why I'm asking if you know.
- 11 Obviously don't speculate. We have Tyler's
- 12 deposition tomorrow. We're obviously going to ask
- 13 those questions.
- 14 A. Yeah.
- Q. But do you know exactly what's entailed 15
- 16 in having Auto-Accept be a part of Idaho's system? 17 MR. FETTERLY: Objection; vague and
- 18 ambiguous, overbroad, lacks foundation.
- 19 THE WITNESS: I don't know the details.
- 20 I know it can be done quickly.
- 21 Q. (BY MS. DUKE) Okay.
- 22 A. And that courts such as Las Vegas
- 23 switched from press queue to an Auto-Accept system
- 24 without even a request. But what is required to
- 25 do that, I don't know.

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Page 194

- 1 New Mexico.
 - 2 And then you were also talking about your

25 you would have talked to clerk-wise, and you said

3 knowledge in the Oregon case of there being a

1 aware those are the expressed concerns.

Q. (BY MS. DUKE) And would those be

3 concerns that would provide a justification for

6 mean, it's a lot of courts that don't have that

9 justification in CNS's mind?

Q. Anything else?

21 about the press review queue.

Do you recall that?

A. No, that's it.

A. Yes.

A. Yes.

11 a worry, but it's not substantiated.

17 those before they were provided to us?

problem that can provide access on receipt.

Q. Any other reason why that wouldn't be a

Q. Now, you served some answers to discovery

Did you have an opportunity to review

Q. And there was mention in those of a

20 conversation that you had with a Washington clerk

Q. And I was asking these questions of who

A. That it's not substantiated, yeah. It's

4 not doing the press review queue in CNS's view? A. No, because so many other courts -- I

- 4 \$108,000 fee.
- 5 A. Right.
- Q. Do you also recall conversations with the 6
- 7 Washington clerk about the press review queue?
- 8 A. Yes.
- 9 Q. What do you recall in that regard?
- 10 A. He was willing to provide it. We had
- 11 actually agreed on the filing codes.
- 12 And then he said Tyler was demanding
- 13 43,000 a year, and he couldn't sell -- Washington
- 14 is a little crazy in that the state will not
- 15 require lawyers to pay an extra fee, so they don't
- 16 have a funding source to pay Tyler.
- 17 As a result, a small town like Snohomish
- 18 County -- small town of Everett, Snohomish County
- 19 north of Seattle, is required to pay for e-filing
- 20 through the city council.
- 21 And he said the city council would be
- 22 willing to pay 43,000 a year. And they're too
- 23 small to push back, so he asked me to ask the
- 24 statewide director to push back.
- 25 Q. And did you?

Page 197

2 Idaho's -- its court system's concerns if 3 Auto-Accept were to be used? MR. FETTERLY: Objection; vague and 4

Q. And are you aware of any of the state of

- 5 ambiguous, overbroad.
- You may answer. 6
- 7 THE WITNESS: I've seen the declarations,
- 8 but I don't find them convincing.
- 9 Q. (BY MS. DUKE) And why not?
- A. I think the basic argument is that the 10
- 11 court couldn't have collected its fees, and I
- 12 don't think that's correct.
- 13 Q. Any other argument you're aware of the
- 14 state courts making as to the problems it would
- 15 face with Auto-Accept?
- 16 A. No.
- 17 Q. What about with press review queue? Are
- 18 you aware through any of the filings in this case
- 19 or discovery responses the concerns that the Idaho
- 20 courts have about initiating a press review queue?
- MR. FETTERLY: Objection; vague and 21
- 22 ambiguous, overbroad.
- 23 You can answer.
- 24 THE WITNESS: It was the subject of a
- 25 pretty long deposition with Ms. Dvorak. So I'm

Page 195

50 (Pages 194 - 197)

(53 of 297), Pagas 531.95297. Gasas 24069303(AB/AP26.7) kt fighty: 2195922 apa 53 s5 397.18

William L Girdner November 9, 2022

- 1 A. I talked to him.
- 2 Q. And who did you talk to?
- 3 A. I don't remember his name. He's
- 4 retiring. He's the statewide IT director. Keith,
- 5 first name. Best I can come up with.
- Q. And what did the two of you discuss?
- 7 A. Just what the state of e-filing was in
- 8 Washington and general. It was a very informative
- 9 conversation.
- 10 Q. Fill me in on that conversation.
- 11 A. Sure. Sure. He said that the supreme
- 12 court and the administrative office of the courts
- 13 were not willing to assess a filing fee, which can
- 14 be 450 a filing, on the state bar. He didn't say
- 15 why.
- 16 And they weren't willing to pay Tyler out
- 17 of the state judicial budget. And so as a result,
- 18 it's still paper filing.
- 19 Q. Was this with respect to Snohomish
- 20 County?
- 21 A. No. No. This conversation was broadly
- 22 about Washington state.
- 23 O. Okay.
- 24 A. And then -- oh, and the possessive nature
- 25 of the clerks with their documents. That was a

Page 198

- 1 big part of the discussion was how some clerks
- 2 felt they owned the documents and refused to
- 3 include their documents in the statewide document
- 4 system and thus led to its downfall.
- 5 Q. What do you mean what "led to its
- 6 downfall"?
- 7 A. There is a statewide system, but it's
- 8 very anemic. There are only a few courts that are
- 9 going into it for documents. Each court is
- 10 selling its own documents online is what it
- 11 amounts to. And there are a few exceptions, as I
- 12 mentioned, Tacoma, and I don't -- yeah, I'm sure,
- 13 actually, King County is charging for its
- 14 documents.
- Q. So I asked you earlier about learning
- 16 that Tyler was going to charge, and you mentioned
- 17 those two instances. And you did not bring up
- 18 this instance with Washington until I refreshed
- 19 your memory of it.
- 20 A. No. No. No.
- 21 Q. Why is that?
- A. Excuse me for interrupting. You
- 23 mentioned 108,000. You were specific about that.
- 24 That's my recollection.
- 25 Q. I actually said charging a fee, and then Page 199

- 1 we got to the 108,000 because you heard they
- 2 originally charged 200,000 and then you said they
- 3 landed on 108,000.
- A. I'm not trying to play games with you,
- 5 but your question was specifically about 108,000,
- 6 if I knew anybody else charging 108,000.
- And my answer was 108, no. If you want
- 8 to know about the others, that's fine.
- Q. Yeah, I do. I want to know any
- 10 conversations -- you represented to Judge Nye that
- 11 Tyler was free of charge, and that is not correct.
- 12 We all know that now.
- 13 So I want to know every communication or
- 14 piece of knowledge you've learned to have you now
- 15 be informed that Tyler does in fact charge for its
- 16 service.
- MR. FETTERLY: Objection; misstates prior 17 18 testimony.
- 19 THE WITNESS: It was free of charge when
- 20 I made that statement. All right?
- 21 Q. (BY MS. DUKE) I don't think you can say
- 22 that. You can say you think it's free of charge,
- 23 but you've done nothing with Tyler to confirm
- 24 that, have you?
- 25 A. I've talked to clerks.

Page 200

- 1 Q. That's not my question. My question is 2 about Tyler.
- 3 Did you talk to Tyler before submitting
- 4 your affidavit to Judge Nye saying there was no
- 5 cost -- let me finish.
- 6 Did you confirm with Tyler that it was
- 7 not going to charge a subscription cost to the
- State of Idaho for press review queue?
- 9 MR. FETTERLY: Objection; misstates prior 10 testimony.
- THE WITNESS: I've only talked to anybody 11
- 12 from Tyler three times. I've talked about that.
- 13 I didn't talk to them about their price structure.
- 14 Q. (BY MS. DUKE) There we go. Okay. So
- 15 prior to submitting the declaration that you
- 16 submitted to Judge Nye back in November of 2021,
- 17 you did not call Tyler to ask whether Tyler
- 18 charged anything for the press review queue,
- 19 correct?
- 20 A. I talked to a large number of clerks --
- 21 Q. That's not my question.
- 22 A. Yeah, and you're misrepresenting my
- 23 testimony.
- 24 Q. No, I'm not.
- 25 A. I am not lying to a judge. I have never

Page 201

51 (Pages 198 - 201)

(54 of 297), Pagas541.95297.60805240693631/16/2025.70k#figtry:2195922apa56 9539718

William L Girdner November 9, 2022

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23 word he used.

- 1 done that. Okay? I have a good faith reason,
- 2 very substantial reason for believing the press
- 3 queue was free. Eight different clerks, is my
- 4 count, saying that, and I have the director from
- 5 New Mexico. So please do not insinuate that I am
- 6 being deceptive to a judge, because I am not and I
- 7 never will be. Q. You are the one that is apparently going
- 9 to that conclusion yourself. What I asked you,
- 10 very specifically, was prior to submitting the
- 11 declaration that you submitted to Judge Nye back
- 12 in November of 2021, you did not call Tyler to ask
- 13 whether Tyler charged anything for the press
- 14 review, correct?
- A. I'm putting your answer in context. 15
- Q. I don't need it in context. 16
- 17 A. I want to put it in context. I do have a
- 18 right to answer this question.
- 19 MS. DUKE: Mr. Fetterly, have him answer
- 20 the question or I will stop the deposition. If he
- 21 needs a break, I'll give him a break, but I am not
- 22 going to --

2

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- 23 MR. FETTERLY: Let's take a break. Let's

5 on the record.

24 take a break. 25 THE VIDEOGRAPHER: Okay. So the time is 25 he said specifically there was no cost.

(Break taken from 3:42 p.m. to 3:49 p.m.)

Q. (BY MS. DUKE) All right. What I was

4 recording. The time is 3:49 p.m., and we are back

7 asking you was very specific, and that is, before

8 submitting the declaration that you submitted to

9 Judge Nye back in November of 2021, did you call

THE VIDEOGRAPHER: All right. So we are

Page 202

Q. And when was his deposition taken?

Q. So there was a report you read that this

2 AO for New Mexico submitted to his supreme court?

Q. And that gentleman's name was?

Q. All right. And did you ever call

A. No, I read his report. I did not talk to

A. I believe he did testify about that.

15 they had -- that Tyler had given them the press

19 giving access to it or not being provided it, but 20 was he asked whether Tyler charged a subscription

16 review queue in those three states, in Georgia, in

A. That -- what he said in his report, that

Q. But was he asked whether or not -- not

A. He said there was no cost. That's the

I'm trying to answer your question, but

Q. Okay. Did you have that question asked

A. Artie Pepin, P-e-p-i-n.

9 him. Sorry, excuse me. He did testify.

Q. And what did he testify to?

17 Nevada, and in California, at no cost.

21 for such service going forward?

7 Mr. Pepin to talk about that?

11 of him in his testimony?

- 2 A. It was a memo to the supreme court.
- 3
- 4 it. So when was it?
- A. It wasn't a deposition. He testified in
- an open-court hearing with Judge Browning.
- 8 A. The date on the report escapes me.
- Q. Do you have a copy of the report?
- 10
- 11 anything for the press review queue?

1 3:42 p.m., and we are off the record.

- 12 A. No.
- 13 Q. It is my understanding that the basis for

10 anyone at Tyler to ask whether Tyler charged

- 14 your representation to Judge Nye was your
- 15 discussion with the New Mexico -- was it court
- 16 clerk or administrative officer?
- A. It was a report by him to the supreme
- 18 court, a memo by the director of the
- 19 administrative office.
- 20 Q. Okay.
- 21 A. That wasn't the only basis. There were a
- 22 number of --
- 23 Q. I'm getting to those. If you'll let
- 24 me -- I am getting to those.
- 25 A. All right.

- 1
 - Q. Well, no, you said he also testified to
- 5
- Q. And when was this report? 7
- 9
- A. I think we've attached it to one of my 11 declarations.
- MR. FETTERLY: It's been filed and/or 12 13 produced in this case.
- Q. (BY MS. DUKE) Now, in addition to
- 15 Mr. Pepin, did you talk -- you referenced, I
- 16 think, eight or nine Georgia clerks that you
- 17 talked to?
- 18 A. No. In total, eight clerks. I'd say
- 19 five or six in California.
- 20 Q. Okay. Five or six in California. And
- 21 then where were the others?
- 22 A. Georgia.
- 23 Q. And who were the court clerks you talked
- 24 to in California?
- 25 A. I can tell you the courts. I can't

Page 205

Page 204

William L Girdner November 9, 2022

- 1 remember their names off the top of my mind.
- Q. All right. And what were the courts?
- 3 A. Kern, Santa Barbara, Monterey, Napa,
- 4 Santa Clara, and there may have been one or two
- 5 others. Those are the ones I can remember.
 - Q. And why did you choose those clerks?
- 7 A. They're the ones who would answer my
- 8 question, and they were Tyler courts.
- 9 Q. And were they the actual district court
- 10 clerk? Or what were those official titles?
- 11 A. Well, they call them CEOs in California,
- 12 chief executive officer.
- 13 Q. And when would you have made those calls
- 14 to them?

6

- 15 A. Two years ago, year and a half ago.
- 16 Q. All right. And then you mentioned some
- 17 Georgia clerks?
- 18 A. Yeah.
- 19 Q. How many of those?

A. Court clerks.

- A. Well, there's two that -- I believe two.
- 21 One I'm certain of, and she's from DeKalb County.
- 22 And the other one -- I don't know what county is
- 23 from.

1

- Q. And again, are they district clerks or
- 25 CEOs? What are they referenced to there?

- 1 it is commonly known by older judges, actually,
- 2 who practice in the courts.
- 3 So that's one goal is to not lose that
- 4 access. But the -- what we've been talking about
- 5 today is to also keep the courts open. That is
- 6 the goal. And to keep our democracy and the
- 7 constitution in their strength.
- 8 Q. Sure. But you've represented to
- 9 Judge Nye that you are seeking through either
- 10 negotiation or litigation to take back the
- 11 traditional access that was taken away by clerks
- 12 in the thrall of a new technology, correct?
- 13 A. And I wrote that introduction. Yes,
- 14 that's one of the goals.
- 15 Q. And that's actually your sworn testimony, 16 right?
- 17 A. Yes, I believe so.
- 18 Q. And that traditional access that you're
- 19 referring to is the access that we have discussed
- 20 with Ms. Valenti yesterday as to what was
- 21 occurring when there were paper filings before the
- 22 court clerks got this new technology, correct?
- MR. FETTERLY: Objection; vague and
- 24 ambiguous, overbroad, lacks foundation.
- 25 THE WITNESS: Traditional access is not

Page 208

- Page 206
- Q. And why did you call those two?
- 3 A. Our lawyer in Georgia called them or
- 4 emailed them because they had press review queues.
- 5 Q. So there's actually emails to them about
- 6 this?
- 7 A. Yes. We've submitted them in federal
- 8 court cases.
- 9 Q. Anyone else that you consulted prior to
- 10 making the representation that Tyler did not
- 11 charge anything for its press review queue?
- 12 A. That's the universe of consultation I can 13 think of.
- 14 Q. Now, CNS's, I guess, goal in this
- 15 litigation is to take back the traditional access
- 16 that was taken away by the clerks when the
- 17 e-filing started in the state of Idaho; is that
- 18 correct?
- 19 MR. FETTERLY: Objection; vague and
- 20 ambiguous, overbroad.
- You may answer.
- THE WITNESS: That's one of the goals,
- 23 which is to -- we had traditional access to paper
- 24 that was on receipt. As I said, Judge Bobby
- 25 Shepherd in the Eighth Circuit referred to it, and

- 1 limited to Idaho.
- 2 Q. (BY MS. DUKE) Sure. But we certainly
- 3 understand that Ms. Valenti testified to the
- 4 access that she had, and access related to civil
- 5 complaints filed in the state of Idaho before
- 6 electronic filing, correct?
- 7 A. Idaho is consistent with that tradition.
- 8 Ada County was.
- 9 Q. And she testified to what her process was
- 10 in other counties to have access to newly filed
- 11 complaints, correct?
- 12 A. She did. She did, yes.
- 13 Q. And one of CNS's goals is to get back the
- 14 access that Ms. Valenti had before?
- 15 A. No. You're rephrasing. That's the
- 16 traditional access. By that I've been pretty
- 17 specific. Access at the time the case crosses the
- 18 counter. That's my goal.
- 19 Q. Okay. And if that's your testimony sworn
- 20 to today, then that would be the case in any
- 21 declaration you filed in this case.
- 22 Is that your representation to Judge Nye,
- 23 that that's what you mean by "traditional access"?
- 24 A. Traditional access is access at the
- 25 counter at the time or shortly after receipt.

Page 209

53 (Pages 206 - 209)

William L Girdner November 9, 2022

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- 1 Q. And that is what Ms. Valenti testified to 2 was occurring prior to Idaho's courts getting new 3 technology, correct?
- 4 A. In Ada County.
- 5 MR. FETTERLY: Objection; vague and 6 ambiguous, overbroad.
- 7 Q. (BY MS. DUKE) And then Ms. Valenti also 8 testified to how she accessed new filings under
- 9 the paper system across the state, correct?
- 10 A. In addition to Ada County, yes.
- 11 MR. FETTERLY: We've been going a while
- 12 without a proper break. I know we've had a couple
- 13 small ones. Let's go off the record, take a
- 14 proper, ten-minute break. Okay?
- 15 THE VIDEOGRAPHER: So it is 3:59 p.m.,
- 16 and we are off the record.
- 17 (Break taken from 3:59 p.m. to 4:09 p.m.)
- 18 THE VIDEOGRAPHER: All right. So we are
- 19 recording. The time is 4:09 p.m., and we are back 20 on the record.
- 24 6 (24) 16
- 21 Q. (BY MS. DUKE) So if Idaho's courts
- 22 provide same-day access to newly filed -- the
- 23 A.A.1. through 6 that we talked about earlier,
- 24 that would satisfy CNS with respect to any First
- 25 Amendment concerns in this lawsuit; is that
 - Page 210

- A. I think the courts, respectfully, need to
- 2 stop the practice of withholding the cases until
- 3 the completion of processing.
- 4 Q. Do you have an understanding of what
- 5 processing is done on state court complaints that
- 6 are submitted to File & Serve by the court clerks?
- 7 A. Submitted by the court clerks?
- 8 Q. No. No. Sorry. I might have asked that 9 wrong.
- 10 A. Yeah.
- 11 Q. Do you have an idea of what the court
- 12 clerks do processing-wise with a new complaint
- 13 that's been submitted to Tyler File & Serve before
- 14 they transfer it to the case management system?
- 15 A. Only a very rough idea. I know that --
 - Q. And what's that rough idea?
- 17 A. Yeah, the complaint goes into a queue for
- 18 review, and I believe the clerks go through the
- 19 various clerical entries by the filer and check
- 20 the amount of money.
- 21 And otherwise, there is a fairly thick
- 22 manual that -- of how to go about it that I have
- 23 not looked at for Idaho.
- So I know the really rough basis is, I
- 25 guess, what I'm saying.

Page 212

- 1 correct?
- 2 MR. FETTERLY: Objection; vague and 3 ambiguous.
- 4 THE WITNESS: That's not what I testified
- 5 to.
- 6 What I've testified to is that I think
- 7 we're entitled to access shortly -- at receipt or
- 8 shortly after without having to wait for
- 9 processing to be completed. And the -- and I said
- 10 that the same-day access is a question of
- 11 practicality and finances. In other words, I
- 12 wouldn't challenge a court that was providing same
- 13 day.
- So it's not a question -- you understand
- 15 me, I know.
- 16 Q. (BY MS. DUKE) So if Idaho's courts were
- 17 to provide same-day access to CNS of the
- 18 complaints we talked about, which were the A.A.1.
- 19 through 6, that would not be something you would
- 20 pursue litigation-wise in the state of Idaho?
- A. Had they provided that in the past, I
- 22 certainly wouldn't have brought this suit.
- Q. And at this point, is it your position
- 24 that if they were to do that now, that would not
- 25 be sufficient to resolve this lawsuit?
- Page 211

- 1 Q. Are you aware of the bases in which
- 2 clerks reject a complaint for transfer into the
- 3 case management system?
- 4 A. Yeah, I talked about the word "reject,"
- 5 so if you'll allow me, I'll just say "ask for
- 6 corrections," which is how I would see it, from 7 the filer.
- 8 And I believe there is a short list, but
- 9 I'm not familiar with what that list is. Such a
- 10 list is common in many courts.
- 11 Q. Has CNS had any communications with state
- 12 courts regarding concerns those state courts
- 13 have -- security concerns those state courts have
- 14 as to implementing the press review queue or using
- 15 the press review queue?
- 16 A. No, not along the lines of Ms. Dvorak's17 concerns.
- 18 Q. Have any of them raised any type of
- 19 security concerns as far as you know from CNS's
- 20 standpoint?
- 21 A. Confidentiality is a very common
- 22 argument. I wouldn't call it a security concern.
- 23 Q. And what do you mean by
- 24 "confidentiality"?
- 25 A. The argument is often made that

Page 213

54 (Pages 210 - 213)

(57 of 297), Pagas571.9£2.97.60\$6524069363(AR/AP26.7)k4Filetry:219592£apa57.5£397.18

William L Girdner November 9, 2022

- 1 a -- well, that a filer might make a mistake.
- 2 Q. And what's CNS's response to that?
- 3 A. That it's the filer's duty and that where
- 4 there is -- that the evidence of such mistakes, to
- 5 use Judge Rice's language, in the Gable decision,
- 6 is -- I think -- she didn't say "minuscule," but
- 7 it was something very close to that. I was going
- 8 to quote her, but I forgot what she said.
- Q. Any other either confidentiality or
- 10 security concerns that have been raised by any
- 11 state courts with respect to implementation of the
- 12 press review queue?
- 13 A. No, not that I can think of.
- 14 Q. Same question for Auto-Accept. Any
- 15 communications between CNS and any state courts
- 16 about any security or confidentiality concerns
- 17 with the implementation of Auto-Accept?
- 18 Sorry. Did you answer?
- 19 A. I answered "no."
- 20 Q. I'm sorry. I did not hear you.
- 21 A. I said it slowly.
- 22 Q. Any communications with any state courts
- 23 about any of the costs they would incur associated
- 24 with implementation of the press review queue
- 25 other than what we already testified to -- you

- 1 the door and then the individual -- the
- 2 administration, the IT staff of the client, of the
- court, needs to come and grab the information.
- Q. And in grabbing the info, then build
- 5 their own press review queue with that
- 6 information, right?
- 7 A. Correct. Yes.
- 8 Q. Have you had any discussions with any
- state courts as to the cost that it would take a
- 10 court to take -- you know, to get Tyler's press
- 11 review API from Tyler? Do you know if Tyler's
- 12 charging for that?
- 13 A. I think I know where you're going, and I
- 14 think I can answer the question.
- In other words, the API is offered for 15
- 16 free. That is by Tyler. But obviously the IT
- 17 staff then has to program it. And that is not
- 18 without cost.
- 19 Q. And have you talked with any state courts
- 20 about what that cost would be for a state court to
- 21 utilize Tyler's press review API?
- 22

Page 214

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- 23 Q. Do you know whether Tyler's press review
- 24 API is even available at this point?
- 25 A. I heard from yesterday that it's not.

Page 216

- 1 know, you already testified to with respect to New
- 2 Mexico, the Georgia and California clerks, and
- 3 Washington?
- A. Yeah, again, not that I can think of. I
- 5 think if there's any labor costs that were
- 6 discussed -- but, no, none of that. Nothing like
- 7 that. Nothing other than what we talked about.

Q. And any costs discussed between CNS and

- 9 state courts as to costs associated with the
- 10 implementation of Auto-Accept?
- 11 No. My understanding is there are no 12 costs.
- 13 Q. So you mean no costs as in Tyler does not
- 14 charge for it?
- A. Correct.
- Q. Any discussion of any other costs if 16
- 17 Auto-Accept is implemented on the court side?
- 18
- 19 Q. Now, we've talked some -- or we haven't
- 20 talked yet. What do you understand Tyler's press
- 21 review API to be?
- A. This is a very, very rough idea. Okay?
- 23 I think Director Cozin, during her deposition,
- 24 said an API is like a door. And I think that's a
- 25 pretty good analogy. Meaning that the Tyler opens

2 at all relating to Auto-Accept and it being

Q. Has CNS had any communications with Tyler

- 3 implemented in the state of Idaho?
- 4 A. Of Idaho?
- 5 O. Correct.
- 6 A. There's been no conversations with Tyler
- 7 about Auto-Accept anywhere.
- 8 Q. And as I understand it --
- 9 A. Including Idaho.
- 10 Q. Okay. That's fair.
- Have there been any communications 11
- 12 between CNS and Tyler relating to the application
- 13 programming interface, so the API, for the press
- 14 review queue and its use in the state of Idaho?
- 15 A. I'm trying to think what you're driving
- 16 at. But there's no communication at all with
- 17 Tyler. So they haven't talked to me about an API.
- Q. And you, CNS, have not talked to them
- 19 about API either, correct?
- 20 A. No.
- 21 Q. Is that correct?
- 22 A. Yeah, that's correct. That's correct.
- 23 Q. Given that, then there certainly are no
- 24 communications between CNS and Tyler relating to 25 the API or the press review queue including its

Page 217

(58 of 297), Pagas 581.95297. 6086524669703(116/21065-70kHaptry:2115928apa 58 59 39 118

William L Girdner November 9, 2022

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2 league together.

4 that clear?

- 1 availability to and implementation in Idaho,
- 2 correct?
- 3 A. No, I just want to be careful and
- 4 not -- you know, there was a conversation between
- 5 the counsel for Tyler, which you're aware of, I
- 6 know, which is attached to the -- in the list of
- 7 subjects today. And the lawyer from Bryan Cave,
- 8 but I have not been involved in those
- 9 conversations.
- 10 MR. FETTERLY: Bill, let me jump in to
- 11 help with the transcript. Be mindful of the
- 12 "yeses" and "nos," because sometimes I think
- 13 you're saying -- she's asking you if something is
- 14 correct and you're saying "no," and it might
- 15 create some confusion in the transcript.
- 16 THE WITNESS: Okay. Sorry. That is 17 correct.
- 18 Q. (BY MS. DUKE) Have there been any
- 19 communications at all between CNS and Tyler
- 20 relating to the press review queue as part of
- 21 CNS's position in this lawsuit and its preliminary
- 22 injunction that it filed with the court?
- A. No. We've referenced the email from Nina
- 24 Minney attaching the products. I'm not including
- 25 that.

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- Page 218
- (Deposition Exhibit No. 29 was marked.)
 Q. (BY MS. DUKE) All right. You'll see

A. That I make it clear that we're not in

Q. And to whom did they want you to make

A. To the -- well, I think to anyone in the

6 future and to anyone that I had sent a copy of

8 statement -- explaining the benefits and costs of

Q. And did you take any action after you

7 their product -- I think it's called a product

Auto-Accept and the press review queue.

A. I wrote letters to the officials in

16 we're not in league. They're an e-file service 17 provider, and we're a news agency. And I'm sure

15 Minnesota and South Dakota saying that obviously

11 were made aware of this letter?

Q. What did you do?

18 you got copies of those letters.

A. I did.

Q. Sure.

22 mark this as Exhibit 29.

25 October 13, 2022, there is an email to the state

21 pull up the group that we've been provided. I'll

Page

MS. DUKE: And I'll pull one up here, or

Page 220

- Q. Got it. So let me turn to that document
- 2 you were talking about. Just give me a moment.
- 3 All right. We had talked about a letter.
- 4 If you take a look at the notice of today's
- 5 30(b)(6) deposition -- and that's Exhibit 25 for
- 6 the record.
- 7 We had included as Exhibit 1 -- I'll just
- 8 put it up here on the screen -- a letter that was
- 9 emailed to you by Tyler.
- 10 Can you see that okay?
- 11 A. Yes.
- 12 Q. So it's my understanding that you
- 13 received this September 30, 2022, email, but
- 14 deleted it without knowing after you received it;
- 15 is that correct?
- 16 A. Yeah, that's correct. I receive 50 to
- 17 100 unsolicited commercial and political,
- 18 especially these days, emails, like a lot of
- 19 people. And I delete them in series. I deleted
- 20 this one inadvertently.
- 21 Q. All right. And what did you
- 22 understand -- now that you have seen a copy of it,
- 23 what did you understand Tyler was requesting of
- 24 CNS in this September 30, 2022, Exhibit 1 to
- 25 Exhibit 25?

- 1 court administrator for Pierre, South Dakota. And
- 2 I can move down.
- 3 Is this the letter that you're referring
- 4 to?
- 5 A. It is.
- 6 Q. Now, you reference in there a letter that 7 you had sent on the 26th of September.
- 8 Please explain for me what that letter
- 9 was, what the purpose of it was, and what was
- 10 attached and included with that September 26th
- 11 letter.
- 12 A. I was asking -- as we've said in the
- 13 past, I've made requests by letters for access at
- 14 or near the time of receipt. And so I was making
- 15 that request to the state court administrator. Is
- 16 this -- South Dakota, yeah.
- 17 Q. Yeah, this one is South Dakota.
- 18 A. And it was -- my Exhibit A is the Tyler
- 19 statement saying "You have this alternative. It's
- 20 available to you. Would you please implement one
- 21 of the two solutions?"
- Q. And when you say your Exhibit A, do you
- 23 mean the PowerPoint that had been included or
- 24 produced in this case?
- 25 A. Yeah. But it's also online in Texas to

Page 221

Page 219

56 (Pages 218 - 221)

(59 of 297), Pagas591.52.20.60865.20693.03(A6/AP65.7) kHaptry: 219.592.20 page 58 59 718

William L Girdner November 9, 2022

- 1 the public. It's -- I believe I used the one that
- 2 was produced in this case, but as I say, it's
- 3 identical to others that are publicly available.
- 4 Q. And was this letter that we're looking at
- 5 here that's Exhibit 29 to the South Dakota state
- 6 administrative officer, was this your effort to
- 7 satisfy Tyler's demand of you and the email that
- 8 they sent you and you inadvertently deleted?
- 9 A. Yeah, if I can put it a little
- 10 differently to explain that that demand was
- 11 ridiculous, that there was no implication or
- 12 association between us, and that should be
- 13 obvious.
- 14 Q. And have you provided this communication
- 15 to Tyler?
- 16 A. No.
- 17 Q. And why not?
- 18 A. I apologize. Our lawyers may have. They
- 19 probably have. But I don't --
- Q. Have you? Have you provided it to the
- 21 counsel that have sent you the letter?
- 22 A. No.
- Q. And why not?
- A. I believe our lawyer sent it.
- Q. But I just want to be clear for the

- 1 Q. And were those the only five that you had
- 2 done that to, so those were the only five letters
- 3 that you needed to send out at Tyler's request
- 4 asking you to clarify?
- 5 A. That is correct.
- 6 MR. FETTERLY: Objection, lacks
- 7 foundation, misstates prior testimony with respect
- 8 to need to do anything.
- 9 Q. (BY MS. DUKE) Okay. And not trying to
- 10 say "need." It's just that Tyler asked that you
- 11 send these letters.
- 12 Are these the five letters that you sent
- 13 in response to that request by Tyler?
- 14 A. Yes.
- 15 Q. Now, is it also your understanding you
- 16 received this email an additional time in addition
- 17 to the one that you had inadvertently deleted?
- 18 A. Yes, it is.
- 19 Q. All right. And what happened with
- 20 respect -- I'll mark it as Exhibit 30 -- in
- 21 exchange between Ms. Keating and Ms. Diaz, what
- 22 happened to that email? Why didn't you see that
- 23 one?

Page 222

- A. Same thing. You know, it's a mistake.
- 25 Same thing. It's inadvertent.

Page 224

- 1 record.
- 2 Did you provide this to Abigail Diaz, the
- 3 chief legal officer who had sent you the
- 4 September 30, '22, letter?
- 5 A. I provided it to Katherine Keating of
- 6 Bryan Cave, who I believe provided it to Abigail 7 Diaz.
- 8 MR. FETTERLY: Bill, I'm going to just
- 9 caution you not to divulge the --
- 10 THE WITNESS: Okay. Okay. Sorry. Okay.
- I did not. The answer is no.
- 12 Q. (BY MS. DUKE) And then I have a couple
- 13 other examples that are included in Exhibit 29.
- 14 There's one to Minnesota and then there's one to
- 15 another state court administrator in Minnesota,
- 16 Sioux Falls, South Dakota. I think there's one
- 17 more.
- 18 A. There's five in all.
- 19 Q. Let's see. Minneapolis. So, yeah, five.
- 20 So these were the five courts that you
- 21 had sent the PowerPoint that was produced in this
- 22 case to these folks, just explaining what Tyler
- 23 had to provide related to Auto-Accept and press
- 24 review?
- 25 A. Correct.

- 1 (Deposition Exhibit No. 30 was marked.)
- Q. (BY MS. DUKE) All right. And so that's
- 3 referenced here, so it was just another
- 4 inadvertent deletion?
- 5 A. Yes.
- 6 Q. Have you sent the PowerPoint that was
- 7 produced in this case that Tyler had provided to
- 8 the Idaho courts, have you sent that to any courts
- 9 other than the five that we just talked about in
- 10 Exhibit 29?
- 11 A. No.
- 12 Q. And do you intend to send that to any
- 13 other courts?
- 14 A. I haven't planned on that. But as I
- 15 said, it's a public document, in my opinion. And
- 16 I don't want to foreclose that responsibility.
- 17 But I have no present plans. I think that answers
- 18 your question.
- 19 Q. It does. Just let me look through things
- 20 here. We just checked off quite a bit.
- 21 It's been a long day for me too, so just
- 22 to be clear, I don't think I asked this, but if I
- 23 did, I apologize.
- 24 A. Okay. That's fine.
- 25 Q. Have there been any communications

Page 225

57 (Pages 222 - 225)

(60 of 297), Pagas601.25227.6080524069363/AR/AP26.Dk4Figtry:2195922apa69854718

William L Girdner November 9, 2022

3

6

7

8 here.

9

10

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25

19 seeking.

- 1 between CNS and Tyler related to this lawsuit
- 2 before this lawsuit was filed?
- 3 A. No.
- 4 Q. How about related to the complaint in
- 5 this case?
- A. Certainly not.
- 7 Q. And how about the preliminary injunction
- 8 in the case?
- A. No, ma'am. 9
- 10 Q. And how about related to CNS's requests
- 11 in the preliminary injunction related to
- 12 Auto-Accept or press review queue by Tyler?
- A. No. 13
- 14 Q. Let me pull up the complaint, which I
- 15 don't think we have marked yet. So this will be
- 16 Exhibit 31.
- Did you have an opportunity -- well, let 17
- 18 me pull it up first.
- 19 (Deposition Exhibit No. 31 was marked.)
- Q. (BY MS. DUKE) Did you have an 20
- 21 opportunity to review this complaint that
- 22 initiated this lawsuit in the District of Idaho on
- 23 July 23 of 2021, did you have an opportunity to
- 24 review it and provide input and comment prior to
- 25 it being filed?

1

2

Page 226

1 produced today, and that stays at 27. But I had

I'll just mark Mr. Girdner's 11/15/21

declaration and his attachments as 28 so that we

other questions, and then we'll get you out of

MS. DUKE: The -- I also have a

12 this one was done on 1/24/22. And I'll mark that

16 1/24/22. Again, this was a declaration that was

18 preliminary injunction that Courthouse News was

Q. I'm assuming with respect to Exhibit 32

17 submitted by your counsel with respect to the

13 as Exhibit 32. So let me show you that.

supplemental declaration that you submitted. And

(Deposition Exhibit No. 32 was marked.)

Q. (BY MS. DUKE) Okay. You'll see that

Q. (BY MS. DUKE) Mr. Girdner, just a few

also referenced it as 28.

5 have 28 completed there.

A. Okay.

A. Yes.

24 your behalf?

- 3 that came from within it that you felt shouldn't 3
- 4 have been included, you would have said something

Q. And I'm assuming if there was anything

5 to your attorneys?

A. Yes.

- A. That's true. That's fair. 6
- 7 Q. And that the complaint effectively, you
- 8 believe, is a true and accurate representation of
- 9 what CNS represents in it and the relief that CNS
- 10 is seeking?
- A. That's true. 11
- 12 MS. DUKE: Let's take a quick break,
- 13 because I think I'm pretty much done. So let me
- 14 just make sure, be obsessive-compulsive. And
- 15 you're almost to your glass of red wine.
- 16 THE WITNESS: You too.
- THE VIDEOGRAPHER: All right. So the 17
- 18 time is 4:34 p.m., and we are off the record.
- 19 (Break taken from 4:34 p.m. to 4:41 p.m.)
- 20 THE VIDEOGRAPHER: All right. So we are
- 21 recording. The time is 4:41 p.m., and we are back
- 22 on the record.
- 23 MS. DUKE: All right. As a matter of
- 24 housekeeping, I had inadvertently, or wrongly, I
- 25 should say, marked Exhibit 27 as the discovery you Page 227

Q. And that it's true and accurate in what 1

22 that you would have reviewed it and corrected

23 anything before agreeing that it could be filed on

2 you represent in it?

A. Okay.

- A. Yes.
- 4 Q. The deposition notice, I think I marked
- 5 that as Exhibit 24 or 5 -- 25. And 25A, I'll mark
- 6 the objections to the exhibit with the
- 7 modification we noted at the beginning.
- 8 Oh, that's 24. Okay. 24, I guess,
- should be the objections. So that should be the end of that tidying. 10
- 11 In the state of Idaho, Mr. Girdner, what
- do you understand a judicial document to be?
- MR. FETTERLY: Objection; vague and 13
- 14 ambiguous, overbroad, calls for a legal
- 15 conclusion.
- 16 You may answer if you can.
- THE WITNESS: I don't have a definition 17
- 18 for that.
- Q. (BY MS. DUKE) Do you have a definition 19
- 20 in the state of Idaho for what a court
- 21 file -- strike that.
- 22 Do you have a definition in the state of
- 23 Idaho for what types of documents are housed
- 24 within the case management system for the Idaho
- 25 courts?

Page 229

Page 228

58 (Pages 226 - 229)

(61 of 297), Pagas611.25227.60805240609763/116/21265-Pktfiletry:2115928aga61 6629718

William L Girdner November 9, 2022

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Q. And I believe at one point counsel asked
      A. I think all documents filed in a case are
 2 housed in a case management system.
                                                         2 you on behalf of Courthouse News to provide a
                                                           definition of the word "file."
 3
         MR. FETTERLY: And objection belatedly,
 4 vague and ambiguous, overbroad, lacks foundation,
                                                         4
                                                                  Do you recall that?
                                                         5
 5 calls for speculation.
                                                               A. Yes.
                                                         6
      Q. (BY MS. DUKE) And do you have an
                                                               Q. And I believe you answered that question;
 7 understanding that the way a document is
                                                         7
                                                           is that correct?
 8 transferred into the case management system for
                                                         8
                                                               A. Yes.
 9 the district court is through a review by the
                                                         9
                                                               Q. I just want to show you a document here.
10 clerk when it's in the Tyler File & Serve system?
                                                        10 One moment.
11
         MR. FETTERLY: Objection; vague and
                                                        11
                                                                 Can you see my screen?
12 ambiguous, overbroad.
                                                        12
                                                               A. I can.
13
         THE WITNESS: Yeah, just -- the problem I
                                                        13
                                                               Q. Okay. I will represent to you that this
14 have is with transfer. And if I can explain that.
                                                           is a copy of the order issued by the court in this
15
      Q. (BY MS. DUKE) Sure.
                                                           action on April 14, 2022, Docket No. 40.
16
      A. I don't know where the document actually
                                                                  And I would ask the court reporter to
17 moves, whether it's in a database that changes a
                                                           please mark this exhibit next sequential number.
                                                        17
18 spot or not. I've always wondered that. So, no.
                                                        18
                                                                (Deposition Exhibit No. 48 was marked.)
19
         But as far as the process of processing
                                                        19
                                                               Q. (BY MS. DUKE) And for the record, I am
20 the cases, I do understand that the case goes into
                                                        20 showing you the paragraph that begins at the very
21 the e-file manager, is then reviewed by the clerks
                                                           bottom of page 24 -- or I'd direct your attention
22 and deputy clerks, and when they hit a button,
                                                        22 to that paragraph.
                                                        23
23 that I believe says "Accept," then it goes into
                                                               A. Yes.
24 the case management system.
                                                        24
                                                               Q. And it continues on to the top of
25
      Q. And it's your understanding that for a
                                                        25 page 25.
                                               Page 230
                                                                                                       Page 232
 1 document that is submitted through Tyler
                                                         1
                                                                 Do you see that paragraph?
                                                         2
 2 File & Serve, that to become part of the case
 3 management system, the "Accept" button needs to be
                                                         3
                                                               Q. And I will read the first sentence of the
 4 hit by the clerk?
                                                         4
                                                           paragraph.
 5
                                                         5
      A. As currently structured.
                                                               A. Okay.
         MS. DUKE: All right. Mr. Girdner, I
                                                         6
                                                               Q. "The court is inclined to agree with CNS
 6
 7 really appreciate your time today. And I'm sure
                                                         7 and other courts that 'filed' is best understood
 8 we'll see you tomorrow too, but it's -- you're
                                                           to mean when the complaint is submitted to the
 9 done.
                                                           respective e-filing system, not to mean once the
10
         THE WITNESS: Thank you.
                                                        10 documents are reviewed/accepted/processed by a
                                                        11 clerk."
         MS. DUKE: At least from my standpoint.
11
12 Mr. Fetterly might have some questions.
                                                        12
                                                                 Does CNS agree with that statement?
13
         MR. FETTERLY: I think I have maybe two
                                                        13
                                                               A. Very much so.
                                                        14
                                                               Q. And does Courthouse News agree with that
14 or three questions.
                                                        15 meaning of the word "filed"?
15
         THE WITNESS: Okay.
                                                        16
                                                               A. Yes, indeed.
16
                                                        17
17
                                                                 MR. FETTERLY: No further questions.
                 EXAMINATION
18 BY MR. FETTERLY:
                                                        18
                                                                 THE WITNESS: Thank you.
      Q. One moment. Mr. Girdner, earlier today
                                                        19
19
20 and throughout the deposition, there has been
                                                        20
                                                                       FURTHER EXAMINATION
21 quite a bit of testimony concerning filed
                                                        21 BY MS. DUKE:
22 documents or what it means to be filed.
                                                        22
                                                               Q. And I guess I would just note, do you
23
                                                        23 have an understanding that there are additional
         Do you remember that testimony?
24
      A. Yeah, of course. It was a central part
                                                        24 proceedings to be had before Judge Nye?
                                                        25
                                                               A. Yes, I do.
25 of this deposition.
                                               Page 231
                                                                                                       Page 233
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59 (Pages 230 - 233)

(62 of 297), Pages 621.052.07.603652406693.03/116/2025-7-Dk#Fietry:2115922ape 62 of 39718

William L Girdner November 9, 2022

2 certainly submit to you that we'll be asking him 3 to reconsider that portion, given that we felt 4 there was a lack of explanation and thus a lack of 5 understanding by him by the parties as to that 6 issue. 7 So I'll just note that so it's clear on 8 the record and it's not some waiver. So duly 9 noted. 10 MR. FETTERLY: Thank you. 11 THE WITNESS: I just want to tell you I 12 usually take a swim in the mornings. That's kind 13 of my ritual, but we got started early today so I 14 didn't get my swim, and I got my coffee. So I was 15 a bit jumpy at the beginning. So I apologize for 16 that. Okay? 17 MS. DUKE: It happens. It's not fun 18 being deposed. So I appreciate your time. 19 THE VIDEOGRAPHER: So this concludes our 20 video deposition of William Girdner, the 30(b)(6) 21 designee. The date is November 9th, 2022. The 22 time is 4:50 p.m., and we are off the record. 23 (Whereupon the deposition was concluded at 4:50 p.m.) 24 ****	2 STATE OF IDAHO) 3 COUNTY OF ADA 4 5 I, Amy E. Simmons, Certified Shorthand Reporter and 6 Notary Public in and for the State of Idaho, do hereby 7 certify: 8 That prior to being examined, the witness named in 9 the foregoing deposition was by me duly sworn to testify 10 to the truth, the whole truth and nothing but the truth; 11 That said deposition was taken down by me in 12 shorthand at the time and place therein named and 13 thereafter reduced to typewriting under my direction, and 14 that the foregoing transcript contains a full, true and 15 verbatim record of said deposition. 16 I further certify that I have no interest in the 17 event of the action. 18 WITNESS my hand and seal this 21st day of November, 19 2022. 20 21 22 23 AMY E. SIMIMOINS CSR, RPR, CRR, CRC, and Notary 24 Public in and for the State of Idaho. 25 My commission expires: 6/13/28.
Page 234	Page 236
STATE OF	

60 (Pages 234 - 236)

[& - 4:41]

&	199:23 200:1,3,5	21 48:18,24	2:00 140:25
& 2:6 5:16 18:3	200:6	21st 236:18	141:1
70:2,5 81:19	1087 2:20	22 173:3 223:4	2:15 141:1,3
82:4,16 120:16	10:07 45:18,19	220 3:21	3
121:5 134:11,16	10:27 45:19,21	225 3:23	3 3:25 12:20
134:21,24	11/15/21 228:3	226 4:3	30 3:11,14,23 5:7
135:16 143:8,15	11:41 98:14,15	228 4:4	12:19 17:20
143:18,18,25	11:57 98:15,17	23 226:23	46:12 47:1,7,17
144:6,17 145:22	12 3:11 46:7,11	231 3:6	47:24 48:4,9,13
152:1 161:1	12:30 98:5	232 4:6	58:17 103:12
166:14 169:11	12:51 138:11,12	233 3:5	111:3 125:19
169:19 179:20	13 220:25	234 235:9	127:7 219:5,13
180:7 187:11	14 232:15	24 3:11 12:22	219:24 223:4
192:3 194:2	15 46:16 61:19	13:9,19 46:21	224:20 225:1
212:6,13 230:10	154 3:19	229:5,8,8 232:21	234:20
231:2	16 79:21	24/7 158:3	300 2:20 72:9
0	163 3:20	240 19:1 50:23	31 4:3 226:16,19
00305 1:4 5:10	18 139:10,14	87:19	32 4:4 228:13,14
013270 3:22	1950 6:17	25 3:13 48:12,14	228:21
013270 3:22 013279 3:22	1:21 1:4 5:10 1:57 138:12,14	105:9 219:5,25 229:5 232:25	342-3299 2:22
013299 3:24	,	254 83:1	342-3310 2:21
013301 3:25	2	25a 229:5	3:42 203:1,2
1	2 12:20 13:11	26 3:15 54:20,21	3:49 203:2,4
	2.5 73:23	57:23	3:59 210:15,17
1 48:9 54:24,25	200,000 190:2	26th 221:7,10	4
55:20 219:7,24 235:9	200:2	27 3:16 104:19	4 3:12
1/24/22 228:12	2021 46:16	104:20,21	40 232:15
228:16	201:16 202:12	227:25 228:1	41 3:17
10 3:22 74:4	203:9 226:23	28 3:19 48:9	415 2:16,16
10/13/22 3:23	2022 1:14 2:9	153:25 154:1,3	43,000 197:13,22
100 25:22 219:17	5:5 46:21 61:19 219:13,24	228:2,4,5	450 198:14
104 3:16	220:25 232:15	29 3:21 4:6	48 3:13 4:6
108 200:7	234:21 235:8,22	105:9 220:22,23	232:18
108,000 190:7,10	236:19	222:5 223:13	4:09 210:17,19
190:16,24 191:9	208 2:21,22	225:10	4:34 227:18,19
192:18 193:4,6	200 2.21,22	29423 236:22	4:41 227:19,21
193:10 197:4			
	I	I	

[4:45 - accessed]

4:45 176:21	9	absolutely 15:14	access 22:23
4:50 234:22,23	9 1:14 3:14 5:5	49:10 149:17	24:6 25:20,22
5	94111-4070 2:15	162:20 163:1,18	33:5 37:8 39:25
5 229:5	9:00 12:19 13:8	abstain 80:15	40:4,7,9,24 41:4
50 148:14,16	34:24	accept 32:2	41:8,11,13 52:11
219:16	9:15 2:10 5:5	60:21 63:18,23	58:4 61:8,9 62:2
51 61:17 62:15	9:23 13:1	63:23 64:1,4,8	63:24 64:1,15
62:19 107:9	9:27 13:4	64:15 66:10	70:8,15 72:14
52 148:14	9th 2:8 234:21	68:9,11,20 69:1	74:7,24 79:7,10
54 3:15	235:8	69:21 70:24	80:4,5,11 84:17
5:00 33:13	a	72:7 76:1,7,9,12	84:21 86:4,5,23
6	1	76:19,24 77:11	87:11 90:7,16
_	a.a. 54:18	78:13,14 85:5	109:16,24
6 3:5,11,14,15	a.a.1. 54:10	86:16,22 87:5	112:25 113:10
5:7 12:19 46:7	57:14,15,22 58:25 210:23	122:16 123:7	115:8 118:23
46:11,12 47:1,7 47:17,24 48:4,9	211:18	143:22 145:8,15	120:12 129:7,9
48:13 54:6,25	a.m. 2:10 5:5	145:19 192:22	129:23 130:25
55:20 57:15,22	12:19 13:4	192:24 193:20	131:4,21,25
58:25 111:3	45:18,19,19,21	193:21 194:2,16	132:19 136:3
125:19 127:7	98:14,15,15,17	194:23 195:3,15	143:21 146:6
210:23 211:19	aa1 54:6	214:14,17	147:1,3 151:24
219:5 234:20	abbreviated	215:10,17 217:2	152:23 153:19
6/13/28 236:25	156:11	217:7 220:9	154:20,21,22,24
60 4:3	abigail 3:24	223:23 226:12 230:23 231:3	155:8 157:11 160:24 161:8,11
62 4:5	223:2,6	acceptable	160:24 101:8,11
675-3400 2:16	ability 10:11	175:23	167:21 179:25
675-3434 2:16	14:25 15:16,22	acceptance	183:16,17,19
685 1:25	16:2 39:13	167:20	189:9 196:7
6:00 34:11,15	able 11:22 40:15	accepted 23:21	204:19 207:15
7	48:8 52:15 83:1	24:22 144:2,23	207:23 208:4,11
	94:17 96:16	144:24,25 150:2	208:18,19,25
7387 2:20	102:18 103:20	167:11,13	209:4,4,10,14,16
7th 2:15 6:17	166:2 185:6	233:10	209:17,23,24,24
8	abortion 57:4	accepting 120:5	210:22 211:7,10
83707 2:21	abreast 47:4	165:18	211:17 221:13
	absent 112:19	accepts 81:2	accessed 63:21
		118:19	210:8

William L Girdner November 9, 2022

[accessible - ambiguous]

accessible 34:25	adding 183:2	ago 70:13 73:2	alabama 70:22
35:3	addition 187:19	93:25 100:13	71:7
account 146:5,7	189:8 205:14	109:21 111:25	alameda 75:10
accurate 21:3	210:10 224:16	112:22 114:7,19	75:13
28:7 108:9	additional 36:6	115:11,17,22	alaska 35:12,19
116:20 227:8	36:14 90:4,12	191:2,5 206:15	139:6
229:1	224:16 233:23	206:15	aleck 122:4
accurately 10:14	address 11:4	agree 13:25	alleged 155:19
14:18	14:25 124:23	14:17 16:11	179:2 182:13
acknowledge	127:11 128:7	22:7 23:23	alleges 151:24
162:12	addresses	28:11 32:19	alleging 151:23
act 57:5	124:15	119:19,21 120:4	allow 75:13
acting 143:5	adjacent 115:20	128:23 131:17	213:5
action 111:18	adjust 126:8	131:19,24 132:8	allows 87:11
144:15 220:10	administration	133:19,22,23	116:25 117:1
232:15 236:17	56:8 190:23	134:3 147:14,14	alternate 178:22
actionable 185:1	216:2	150:21 162:15	179:1
actions 157:4	administrative	162:21 179:4	alternative
actual 133:16	1:8 71:9 198:12	233:6,12,14	131:7 153:2
180:15 181:13	203:16,19 222:6	agreed 13:10	161:13,17 178:6
206:9	administrator	67:12 124:20	178:6 192:22
ada 2:8 22:2,24	221:1,15 223:15	129:16 197:11	221:19
23:3 24:15	admission 9:22	agreeing 144:19	alternatives
26:15 28:1	admissions 3:17	166:24 167:1	161:18,20
182:3 209:8	104:17	228:23	amazing 79:19
210:4,10 236:3	admit 113:21	agreement 71:10	148:18
adam 184:8	adopted 38:6,19	71:11	amazingly 66:1
adapted 73:16	39:1 88:5,8	ahead 8:25	ambiguous
93:18	advance 158:10	11:21 12:23	29:24 31:13
add 14:15,20	advantages	25:3,13 45:14	41:24 53:4 55:8
16:8 17:3,5	89:24	53:12 102:14,15	58:11 65:5
21:16 22:3	affidavit 201:4	104:18 111:13	92:21 103:24
77:13 79:16	afield 125:18	112:13 114:2	118:8 119:4,24
87:24 97:13	afloat 18:23	122:4 126:6	121:9,20 122:19
145:6 156:3	age 156:10	130:16 138:6	123:4 124:18
192:21	agency 220:17	139:12 160:17	130:2,11 132:3
added 85:17	agents 19:4	172:14 182:21	132:14 133:11
		190:5	135:10 142:25

[ambiguous - argumentative]

161:6 164:20 9 165:24 168:16 1	swer 8:13,20 0:1,1 15:15 6:22,24 17:5	answers 9:15,19 10:6,7,9,25 11:2	appearing 5:20 appears 183:24
165:24 168:16	·		appears 10J.44
	0.44,44 17.5	11:18 15:9,10,12	appendix 3:15
189:14 194:18 3	3:9,15,17,20	16:2,8,8 38:12	applicable 38:3
195:5,22 207:20 4	0:15,17 41:2	47:9 48:3,9	39:19
·	2:1 44:3,16,19	125:1 186:16	application
	9:7,8 51:22	196:14 225:17	13:16 116:21,21
	5:9,11 89:12	235:12,13	125:17 193:21
amended 3:11 9	2:7,22 96:21	anticipating	194:7 217:12
3:13 39:14	01:10 105:8	169:4	apply 58:8
amendment 58:7 1	08:9 110:5	anybody 45:25	appreciate 16:14
131:9,12 132:10 1	20:2 121:11	51:11 60:8	45:16 86:12
132:18 160:11	22:21 123:5	98:22 200:6	110:12 142:12
161:3 185:2,15	24:21 125:21	201:11	163:23 172:8
185:17 210:25	26:11 127:8	anymore 63:8	231:7 234:18
amendments 1	28:16 132:4,16	100:10	approach 157:25
38:10 39:5	32:17 135:11	anyway 58:20	appropriate
amount 32:1 1	40:11 143:2	73:5 91:22	133:25 134:5
91:19 129:18	50:20,23	118:13 136:18	approval 27:17
131:3 153:16	51:18,20	152:15 153:11	approved 174:24
155:25 170:23	52:13 153:3,12	166:5 174:16	approximately
186:1 190:13	54:13 157:7	ao 204:2	115:11
212:20	65:25 172:5	api 215:21,24	april 232:15
	77:18 186:20	216:11,15,21,24	archives 150:12
amy 1:25 2:6	87:9 189:15	217:13,17,19,25	151:13,15
	93:25 195:6,23	apologize 21:17	area 142:15
236:5,23	200:7 202:15,18	34:3,5 96:11	argue 119:11
analogy 215:25 2	202:19 204:24	222:18 225:23	125:25 178:20
analysis 132:19 2	206:7 207:21	234:15	179:17
/	214:18 216:14	app 112:15,16	argued 44:14
	23:11 229:16	115:15 116:8,16	184:6
	swered 41:1	116:19	argument
anemic 199:8 4	3:3 44:17,20	apparently	135:19 177:21
	-5:4,6 129:3	183:23 184:4	195:10,13
	214:19 232:6	202:8	213:22,25
	swering 17:10	appearances	argumentative
′	0:12 41:19	2:13 5:19	27:3 44:2 45:5
	53:4		120:20 124:9

[argumentative - availability]

arguments 168:2 190:2 192:1,8,17 atlanta 65:23 69:21 70:24 arizona 40:14 192:18 194:10 70:4 115:7,9 72:7 76:1,7,9,12 arranged 158:7 218:13 221:12 attached 114:5 76:19,24 77:11 arrangements 224:4 234:2 205:10 218:6 86:16,22 87:5 76:19,24 77:11 aside 47:16 198:13 160:25 assessi 179:8 179:25 193:21 194:2,16 asked 15:6,8,22 177:11 assesment 177:11 assesment 179:25 193:21 194:2,16 38:13 43:9,13 35:6 145:10 180:16 attachments 218:10,17 217:2 38:13 43:2 95:19 96:25 attempting 223:23 226:12 44:17 45:4 106:18 associated 2:6 50:15,25 51:4,18 associated 2:6 36:1 99:1 100:25 99:8,21 100:16 108:4 129:2 associated 2:6 36:1 199:1 39:22:2 99:8,21 100:16 108:25 22:12 associated 2:6 1	125:4	179:12,17 187:8	asterisk 182:7	68:9,11,20 69:1
arizona 40:14 192:18 194:10 70:4 115:7,9 72:7 76:1,7,9,12 72:7 76:1,7,9,12 76:19,24 77:11 arranged 158:7 218:13 221:12 attach 169:7 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 76:19,24 77:11 78:13,14 85:5 86:16,22 87:5 20:21:10 20:21:10 20:21:10 20:22:2 123:7 145:8,15 86:16,22 87:5 123:7 145:8,15 145:19 192:22 123:7 145:8,15 145:19 192:22 123:7 145:8,15 145:19 192:22 179:25 193:21 194:2,16 193:21 194:2,16 193:21 194:2,16 193:21 194:2,16 193:21 194:2,16 194:23 195:3,15 124:14,17 215:19 193:21 194:2,16 194:23 195:3,15 124:14,17 215:23 193:21 194:2,16 194:23 195:2,15 193:21 194:2,16 194:23 195:3,15 124:14,17 215:23 193:21 194:2,16 194:23 195:2,15 193:21 194:2,16 194:23 195:2,15 193:21 194:2,16 194:23 195:2,15 193:21 194:2,16 1		·		
71:24 141:20 196:24 203:7 attach 169:7 76:19,24 77:11 76:19,24 77:11 arranged 158:7 218:13 221:12 attached 114:5 78:13,14 85:5 86:16,22 87:5 arrival 88:24 asserting 160:23 attaches 131:4 145:19 192:22 145:19 192:22 artival 88:24 assering 160:25 attaches 131:4 145:19 192:22 145:19 192:22 aside 47:16 198:13 assessment 177:11 228:4 199:25 193:21 194:2,16 111:3 assessment 177:11 228:4 199:22 199:21 194:2,16 34:9,13 35:6 145:10 180:16 attachments 214:14,17 215:10,17 217:2 217:7 220:9 38:13 43:2 95:19 96:25 attempt 72:25 attempt 72:25 223:23 226:12 automated 92:8 39:1 100:25 106:18 associated 2:6 36:1 99:10:25 99:8,21 100:19 92:11,17,25 93:3 101:3 103:7 215:9 associated 2:6 107:16 157:5 107:16 157:5 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:	_			
arranged 158:7 218:13 221:12 attached 114:5 78:13,14 85:5 arrangements 224:4 234:2 ass 120:10 218:6 86:16,22 87:5 arrival 88:24 asserting 160:23 attaches 131:4 145:19 192:22 192:24 193:20 aside 47:16 198:13 assess 179:8 179:25 193:21 194:2,16 193:21 194:2,16 aside 47:16 198:13 attaching 218:24 194:23 195:3,15 asked 15:6,8,22 177:11 assesment attaching 218:24 194:23 195:3,15 34:9,13 35:6 assigned 145:10 180:16 attempting 223:23 226:12 217:7 220:9 38:13 43:2 95:19 96:25 attend 19:10 223:23 226:12 227:72 20:9 223:23 226:12 223:23 226:12 227:72 29:3 223:23 226:12 223:23 226:12 223:23 226:12 227:72 99:3 24:10,17,25 93:3 24:10,17,25 93:3 24:10,17,25 93:3 24:10,17,25 93:3 24:10,17,25 93:3 24:10,17,12 24:10,17,25 93:3 24:10,17,25 93:3 24:10,17,25 93				
arrangements 224:4 234:2 205:10 218:6 86:16,22 87:5 158:6 ass 122:2 221:10 123:7 145:8,15 artie 188:18 160:25 asserting 160:23 132:20 152:23 192:24 193:20 204:5 assess 179:8 179:25 193:21 194:2,16 aside 47:16 198:13 attaching 218:24 194:23 195:3,15 asked 15:6,8,22 177:11 228:4 215:10,17 217:2 36:25 37:2 assigned 145:4 attempt 72:25 217:7 220:9 38:13 43:2 95:19 96:25 attempting 223:23 226:12 38:13 43:2 95:19 96:25 attended 19:10 92:11,17,25 93:3 44:17 45:4 106:18 associated 2:6 316:2 14:23 321:19 93:4,13,19,21 93:4,13,19,21 94:2 95:5,10,19 99:8,21 100:16 101:17,12 attended 27:19 93:4,13,19,21 96:22 97:5 99:3 96:22 97:5 99:3 8ttended 27:19 93:4,13,19,21 136:1 96:22 97:5 99:3 101:17,12 101:17,12 101:17,12 101:17,12 101:17,12 101:17,12 101:17,12 101:17,12 101:17,12	arranged 158:7			· ·
158.6 ass 122:2 221:10 123:7 145:8,15 arrival 88:24 asserting 160:25 attaches 131:4 145:19 192:22 192:24 193:20 aside 47:16 198:13 assess 179:25 193:21 194:2,16 asked 15:6,8,822 177:11 assesment attachments 214:14,17 asked 15:6,8,822 177:11 assigned 145:4 attachments 214:14,17 34:9,13 35:6 145:10 180:16 assist 94:16 attempt 72:25 attempt 72:25 attempt 72:25 attempt 72:25 attempt 19:10 p3:4,13,19,21				· ·
arrival 88:24 asserting 160:23 attaches 131:4 145:19 192:22 192:24 193:20 aside 47:16 198:13 attaching 218:24 193:21 194:2,16 194:23 195:3,15 214:14,17 228:4 214:14,17 228:4 214:14,17 215:10,12 214:14,17 228:4 215:10,12 214:14,17 228:4 215:10,12 214:14,17 228:4 215:10,12 214:14,17 228:4 215:10,12 214:14,17 228:4 215:10,12 214:14,17 223:23 226:12 214:14,17 223:23 23:23 226:12 214:14,17 214:14,17 223:23 23:23 226:12 214:14,17 214:14,17 214:14,17				· ·
artie 188:18 160:25 assess 179:8 179:25 193:21 194:2,16 aside 47:16 198:13 attaching 218:24 193:21 194:2,16 111:3 assessment 177:11 228:4 214:14,17 215:10,17 217:2 asked 15:6,8,22 177:11 228:4 215:10,17 217:2 217:7 220:9 36:25 37:2 assigned 145:10 180:16 attempt ing 223:23 226:12 automated 92:10:7,7 220:9 38:13 43:2 95:19 96:25 attempt ing 10:7,12 automated 92:32:32 326:12 44:17 45:4 106:18 associated 2:6 attended 27:19 92:11,17,25 93:3 49:1 100:25 5:16 214:23 attended 27:19 93:4,13,19,21 94:2 95:5,10,19 92:2 97:5 99:3 101:3 103:7 108:4 129:2 association 107:16 157:5 101:18,25 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 104:7,10 105:7 167:4,5 197:23 184:16 51:15,511,19 106:4,10,		asserting 160:23		·
204:5 asses 179:8 179:25 193:21 194:2,16 aside 47:16 198:13 attaching 218:24 194:23 195:3,15 111:3 assessment 179:11 attachments 214:14,17 215:10,17 217:2 asked 15:6,8,22 177:11 228:4 215:10,17 217:2 217:7 220:9 34:9,13 35:6 34:9,13 35:6 145:10 180:16 attempting 223:23 226:12 217:7 220:9 38:13 43:2 95:19 96:25 attend 19:10 automated 92:211,172 593:3 44:17 45:4 associated 2:6 5:16 214:23 attended 27:19 93:4,13,19,21 94:2 95:5,10,19 <td>artie 188:18</td> <td>_</td> <td>132:20 152:23</td> <td>192:24 193:20</td>	artie 188:18	_	132:20 152:23	192:24 193:20
aside 47:16 198:13 attaching 218:24 194:23 195:3,15 asked 15:6,8,22 177:11 228:4 214:14,17 34:9,13 35:6 145:10 180:16 assigned 145:10 180:16 attempt 72:25 217:7 220:9 38:13 43:2 95:19 96:25 attend 19:10 223:23 226:12 44:17 45:4 106:18 attended 27:19 93:4,13,19,21 50:15,25 51:4,18 associated 2:6 214:17,25 93:3 44:17 45:4 associated 2:6 212:9 99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 attorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 attorney's 50:16 102:10 103:3,17 140:8,14 52:20 78:4 138:3 51:15,511,19 106:4,10,16 199:15 202:9 78:4 138:3 51:15,511,19 106:4,10,16 212:8 224:10 assuming 17:6 51:23	204:5	assess 179:8	179:25	
111:3 assessment 177:11 attachments 214:14,17 17:1 27:6 33:13 assigned 145:4 attempt 72:25 217:7 220:9 34:9,13 35:6 145:10 180:16 attempting 223:23 226:12 36:25 37:2 assist 94:16 101:7,12 automated 92:8 38:13 43:2 95:19 96:25 attend 19:10 92:11,17,25 93:3 44:17 45:4 106:18 attended 27:19 93:4,13,19,21 50:15,25 51:4,18 associated 2:6 136:1 94:2 95:5,10,19 99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 attorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 attorney 2:5 99:8,21 100:16 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 21:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 27:21 42:25 97:11 101:24 atte	aside 47:16	198:13	attaching 218:24	·
17:1 27:6 33:13 assigned 145:4 attempt 72:25 217:7 220:9 34:9,13 35:6 145:10 180:16 attempting 223:23 226:12 36:25 37:2 assist 94:16 101:7,12 automated 92:8 38:13 43:2 95:19 96:25 attend 19:10 92:11,17,25 93:3 44:17 45:4 106:18 attended 27:19 93:4,13,19,21 50:15,25 51:4,18 associated 2:6 136:1 94:2 95:5,10,19 99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 astorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7	111:3	assessment	_	<u> </u>
34:9,13 35:6 145:10 180:16 attempting 223:23 226:12 36:25 37:2 assist 94:16 101:7,12 automated 92:8 38:13 43:2 95:19 96:25 attend 19:10 92:11,17,25 93:3 44:17 45:4 106:18 attended 27:19 93:4,13,19,21 50:15,25 51:4,18 associated 2:6 136:1 94:2 95:5,10,19 99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 attorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 225:22 232:1 17:23 20:10,15 227:5 audible 9:5 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 austin 66:7 71:12 85:10 101:2 123:2	asked 15:6,8,22	177:11	228:4	215:10,17 217:2
36:25 37:2 assist 94:16 101:7,12 automated 92:8 38:13 43:2 95:19 96:25 attend 19:10 92:11,17,25 93:3 44:17 45:4 106:18 attended 27:19 93:4,13,19,21 50:15,25 51:4,18 associated 2:6 136:1 94:2 95:5,10,19 99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 attorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 43:8,9,10,17 138:2 163:19,23 71:12 85:10	17:1 27:6 33:13	assigned 145:4	attempt 72:25	217:7 220:9
38:13 43:2 95:19 96:25 attend 19:10 92:11,17,25 93:3 44:17 45:4 106:18 associated 2:6 93:4,13,19,21 50:15,25 51:4,18 associated 2:6 136:1 94:2 95:5,10,19 99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 attorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorney's 38:22 108:2,5,6,14,18 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 43:8,9,10,17 138:2 163:19,23 71:12 85:10 101:2 105:11 112:4 183:15 186:16 227:2 228:21	34:9,13 35:6	145:10 180:16	attempting	223:23 226:12
44:17 45:4 106:18 associated 2:6 associated 2:6 36:1 93:4,13,19,21 94:2 95:5,10,19 99:1 100:25 5:16 214:23 215:9 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 attorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 audible 9:5 automatic 94:12 43:8,9,10,17 138:2 163:19,23 176:15 181:24 71:12 85:10 101:2 105:11 112:4 183:15 186:16 227:2 228:21 133:25 134:5 145:10 179:20 <	36:25 37:2	assist 94:16	101:7,12	automated 92:8
50:15,25 51:4,18 associated 2:6 136:1 94:2 95:5,10,19 99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 attorney 2:5 99:8,21 100:16 108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorney's 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 audible 9:5 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 43:8,9,10,17 138:2 163:19,23 71:12 85:10 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 123:2,9 127:23 162:2 141:8 227:2 228:21 133:25 134:5	38:13 43:2	95:19 96:25	attend 19:10	92:11,17,25 93:3
99:1 100:25 5:16 214:23 attention 232:21 96:22 97:5 99:3 101:3 103:7 215:9 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorney's 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 43:8,9,10,17 138:2 163:19,23 101:2 101:2 51:10,13 65:6 176:15 181:24 133:25 134:5 145:10 179:20 162:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 166:7 167:24 assurance 10:24 auto 60:21 63:18 availability	44:17 45:4	106:18	attended 27:19	93:4,13,19,21
101:3 103:7 215:9 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 15:98 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 audible 9:5 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 austin 66:7 101:2 43:8,9,10,17 138:2 163:19,23 71:12 85:10 101:2 51:10,13 65:6 176:15 181:24 183:15 186:16 133:25 134:5 123:2,9 127:23 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	50:15,25 51:4,18	associated 2:6	136:1	94:2 95:5,10,19
108:4 129:2 association 107:16 157:5 101:18,25 138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 austin 66:7 101:2 43:8,9,10,17 138:2 163:19,23 176:15 181:24 101:2 105:11 112:4 183:15 186:16 227:2 228:21 133:25 134:5 automatically 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	99:1 100:25	5:16 214:23	attention 232:21	96:22 97:5 99:3
138:21 139:1,19 108:25 222:12 159:8 160:8 102:10 103:3,17 140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 austin 66:7 101:2 43:8,9,10,17 138:2 163:19,23 71:12 85:10 101:2 51:10,13 65:6 176:15 181:24 133:25 134:5 123:2,9 127:23 162:11 164:12 assurance 10:24 auto 60:21 63:18 145:10 179:20 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	101:3 103:7	215:9	attorney 2:5	99:8,21 100:16
140:8,14 152:20 assume 8:21 181:23 104:7,10 105:7 167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 101:2 43:8,9,10,17 138:2 163:19,23 71:12 85:10 automatically 123:2,9 127:23 15:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	108:4 129:2	association	107:16 157:5	101:18,25
167:4,5 197:23 16:23 17:11 attorney's 50:16 105:12,16,23 199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 43:8,9,10,17 138:2 163:19,23 austin 66:7 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 162:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	138:21 139:1,19	108:25 222:12	159:8 160:8	102:10 103:3,17
199:15 202:9 78:4 138:3 51:1,5,11,19 106:4,10,16 204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 43:8,9,10,17 138:2 163:19,23 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 126:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 166:7 167:24 assurance 63:23,23 64:1,4 33:11 218:1	140:8,14 152:20	assume 8:21	181:23	104:7,10 105:7
204:10,18,20 184:16 attorneys 38:22 108:2,5,6,14,18 212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 austin 66:7 101:2 43:8,9,10,17 138:2 163:19,23 austin 66:7 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 162:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	167:4,5 197:23	16:23 17:11	attorney's 50:16	105:12,16,23
212:8 224:10 assuming 17:6 51:23 80:3,4 109:1,2 138:23 225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 96:17 97:20 43:8,9,10,17 138:2 163:19,23 austin 66:7 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	199:15 202:9	78:4 138:3	51:1,5,11,19	
225:22 232:1 17:23 20:10,15 227:5 139:20,21 asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 43:8,9,10,17 138:2 163:19,23 austin 66:7 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	204:10,18,20	184:16	attorneys 38:22	108:2,5,6,14,18
asking 26:11,12 21:4 75:12 97:7 audible 9:5 automatic 94:12 27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 43:8,9,10,17 138:2 163:19,23 austin 66:7 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 126:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	212:8 224:10	assuming 17:6	51:23 80:3,4	109:1,2 138:23
27:21 42:25 97:11 101:24 august 100:14 96:17 97:20 43:8,9,10,17 138:2 163:19,23 176:15 181:24 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 authority 129:16 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 126:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	225:22 232:1	· ·	227:5	139:20,21
43:8,9,10,17 138:2 163:19,23 austin 66:7 101:2 51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 126:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	asking 26:11,12	21:4 75:12 97:7	audible 9:5	automatic 94:12
51:10,13 65:6 176:15 181:24 71:12 85:10 automatically 105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 126:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	27:21 42:25	97:11 101:24	august 100:14	96:17 97:20
105:11 112:4 183:15 186:16 authority 129:16 123:2,9 127:23 126:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1		·		
126:2 141:8 227:2 228:21 133:25 134:5 145:10 179:20 162:11 164:12 assurance 10:24 auto 60:21 63:18 availability 166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1	· · · · · · · · · · · · · · · · · · ·	176:15 181:24	71:12 85:10	
162:11 164:12 assurance 10:24 auto 60:21 63:18 (63:23,23 64:1,4) availability 33:11 218:1			_	·
166:7 167:24 assurances 63:23,23 64:1,4 33:11 218:1		227:2 228:21		145:10 179:20
		assurance 10:24		_
177:23 179:12 14:13 64:8,15 66:10				33:11 218:1
	177:23 179:12	14:13	64:8,15 66:10	

William L Girdner November 9, 2022

[available - best]

avallable (4.16	102.14 106.10	hagag 212.1	(5.00 (7.15
available 64:16	103:14 106:19	bases 213:1	65:22 67:15
69:6 140:21	107:4 109:12	basic 24:17 81:4	83:1,5 100:8
150:1,17 154:24	115:22 128:25	147:15 195:10	101:5 106:23
161:4 174:19	130:7,14,16	basically 10:21	109:14 110:6
179:21 181:11	137:7 138:7,14	103:18 107:16	112:2 115:5,7
181:16,17 187:6	138:16 141:3,5	basing 127:12,12	119:25 126:14
216:24 221:20	142:14 150:13	188:13	128:3,21 130:21
222:3	158:1 162:9	basis 24:4 25:16	134:25 144:12
avoid 177:24	171:25 172:11	26:22 42:7	146:11 148:6
award 56:14	179:11 193:24	43:17 126:2	152:2,18 153:8
aware 35:22,24	197:23,24	148:5 190:11	156:1 160:16
36:3,12 38:24	201:16 202:11	203:13,21	163:2 170:14
39:20 59:9 84:2	203:4,9 207:15	212:24	174:14 176:4
99:8 100:15	208:10 209:13	bates 3:22,24	182:14,15
103:8 107:9	210:19 227:21	bclplaw.com	188:22,24
124:14 147:17	background	2:17	190:13 191:10
147:23 160:3,6	17:22	beautiful 75:17	204:12 206:20
187:5,20 189:11	backs 105:21	becoming 58:16	208:17 212:18
189:19 195:1,13	bad 163:14	beginning 190:1	213:8 222:1,24
195:18 196:1	balance 90:17	229:7 234:15	223:6 227:8
213:1 218:5	158:12	begins 232:20	230:23 232:1,6
220:11	bank 169:23	behalf 5:25	believed 60:2
b	bar 198:14	38:14 46:16	believes 40:6,23
b 3:9,11,14 4:1	barbara 66:23	48:10 54:5	52:10,25
5:7 12:19 13:12	74:14 206:3	115:2 228:24	believing 42:7
13:21 46:7,11,12	bargain 190:9	232:2	202:2
47:1,7,17,24	base 190:21	belated 92:3	bell 193:18
48:4,9,13 111:3	based 19:17 24:8	133:8	bench 158:19
125:19 127:7	43:1,11 59:20	belatedly 230:3	benefits 220:8
219:5 234:20	64:12,17 65:13	belief 25:16	best 10:11 15:15
back 13:4 20:17	65:14 66:11,18	26:23 44:8 45:1	22:8 56:22
30:15 31:9,25	66:21,22,24,25	believe 11:6	58:14,21 66:18
32:1 33:14	67:2,3 72:21	14:20 15:3 20:4	67:10 68:19
45:22 54:9	73:17 74:7,9,12	21:24 24:2,3	86:10 101:13
72:11 75:18	75:3,7,11 126:18	26:17 29:21	102:24 137:22
76:13,17 77:9	126:21 131:10	40:21 42:19	162:10 198:5
80:17 98:18,19	147:15 190:22	44:13 52:21	233:7
00.17 70.10,17		59:12,23 65:22	

[bet - call]

bet 7:20 16:15 225:20 231:21 breaks 136:9 c 45:12 122:6 234:15 brief 128:22 c c 5:1 142:13 154:8 black 182:10,15 172:10 ca 2:15 155:15 blank 27:17 briefly 12:12 calculate better 48:3 157:18 173:14 199:17 199:17 182:12,25 160:22 bobby 168:2 broad 40:18 calculating 184:20	5 g
142:13 154:8 black 182:10,15 172:10 ca 2:15 155:15 blank 27:17 briefly 12:12 calculate better 48:3 54:15 154:11 157:18 173:14 199:17 182:12,25 beyond 8:3 207:24 53:5 56:23 calculates	5 g
better 48:3 blank 27:17 briefly 12:12 calculate better 48:3 54:15 154:11 157:18 173:14 199:17 182:12,25 beyond 8:3 207:24 53:5 56:23 calculate	5 g
better 48:3 blow 54:14 bring 32:1 126:7 calculates 54:15 154:11 157:18 173:14 199:17 182:12,25 beyond 8:3 207:24 53:5 56:23 calculates	5 g
54:15 154:11 160:22 beyond 8:3 157:18 173:14 bobby 168:2 207:24 199:17 broad 40:18 53:5 56:23 calculating	g
160:22 bobby 168:2 broad 40:18 calculating beyond 8:3 207:24 53:5 56:23 184:20	g
beyond 8:3 207:24 53:5 56:23 calculating	
184:20	16
52.14 111.22 b oice 2.21 10.17 150.13 174.15	1 0
127.6 142.9 60.12 90.20 197.9 0 calculation	.13
155:12 161:11 honus 69:19 hreadly 109:21 1/3:2	175.5
honder 99.10 hastbor 72.15	
$\begin{vmatrix} \mathbf{hig} & 10.10.20.22 & \mathbf{hogg} & 157.22 & \mathbf{hrought} & 125.15 \end{vmatrix} = \frac{1/3.10.1}{1/3.10.1}$	
22.20.25.24 hat 100.5.146.2 169.4.192.11	
26.5 14.15 40.1 147.1 211.22 17/:12,10	
40.21.60.0.62.2 hota 109.21 heaving 205.6	
62:16 74:4 109:3 browning 203.6 california 6:21 7:80	
00.16 107.9 12 hottom 72.19 219.7 222.6	
99.16 107.8,13 bottom 72.18 218.7 223.6 66:17 67: 72:17,22	
156:15 157:8 232:21 23:16 24:16,23 99:10 112	
166:8 183:4 box 2:20 26:3,8,14 27:9 114:17 13	
199:1 brain 7:17 budget 198:17 148:23 1:	
bigger 54:1 breach 55:1 build 216:4 161:23 13	
105:2 154:7 break 8:11,11,14 built 175:2 188:22 20	
biggest 40:12	
74:5 79:22,22 64:23 94:21 40:13 206:11 2	· .
bill 3:21 172:4 98:1,5,8,10,15 bureau 21:13 call 12:19	
218:10 223:8 98:21 102:15,18 24:10,11 26:7 48:21 60:	
bind 47:9 103:1,11 138:7 50:23 60:11,13 71:25 74:	· -
binds 47:19 138:12,17,19 60:14 182:22 91:2 102:	
birth 6:16 140:16 141:1,8 business 18:22 108:11 1	
bit 13:22 17:13 171:22 202:21 40:2 50:10 113:1 110	
54:14 77:10,22 202:21,23,24 58:17 62:10 118:18 13	´
98:1 113:19 203:2 210:12,14 163:6 179:3 141:7.10	
116:5 117:16 210:17 227:12 187:21,23 158:6 16	
165:15 166:25	•
179:11 180:11 breakdown button 230:22 201:17 20	
184:8 193:25	4:6

[call - certainly]

206:11 207:2	23:22 24:22	179:16 180:15	55:5,17,20 56:25
213:22	32:11 38:3	180:16,16,17,18	57:1 180:25
called 22:20	39:19,22,24	180:19,19,21,23	category 54:17
24:17 70:2 72:1	43:20 46:19	181:9,9 192:3,3	55:15 57:14
74:7 93:11 96:8	50:4,19 52:10,18	193:11 194:6,6	96:6
108:21,22 113:9	52:18,20,22	195:18 197:3	cathy 19:14
115:24 116:8,18	54:22 57:2,7,22	205:13 209:17	21:25 22:7
167:15 207:3	58:6 64:9 69:5	209:20,21	50:22 59:13
220:7	73:1 74:1,15	212:14 213:3	89:14 91:17
calling 52:14	79:1,2,4 80:4	221:24 222:2	159:21 181:4
193:6	81:1,9,13,21,22	223:22 225:7	cathy's 59:17
calls 41:25 44:10	82:5,13,15,20	226:5,8 229:24	182:16
45:3 58:11	83:2,6 94:13	230:1,2,8,20,24	causing 100:16
102:18 119:4,24	96:4,5,8,9,15	231:2	100:20 103:8
121:9 122:19	97:1 101:6	cases 22:20,21	129:22
123:4 124:18	103:18,21 116:9	23:16,17,25 24:7	caution 223:9
125:13 132:15	117:21 125:25	26:21 29:7,9	cave 2:14 5:22
133:11 137:1	126:18 133:21	32:8 35:8 49:18	218:7 223:6
144:10 206:13	135:6 136:11,21	49:24 50:2,3,12	caveat 67:25
229:14 230:5	136:23 137:17	50:12,13 52:12	ccms 73:16
capacity 1:7	137:24 143:7,16	52:15 53:7	center 2:15
captcha 99:15	143:23 144:3,7	55:15 58:2,15,24	central 7:8,11,13
99:19	144:13,16,21	69:4 73:25	157:14,15
captchas 99:14	145:1,4,9,9,20	76:24 78:15	231:24
card 77:1 170:22	145:23 147:12	79:10,11,13	ceos 206:11,25
171:2	147:18,24	92:18 93:5,23	certain 23:5
care 130:7	149:12,15,16	94:3 95:11	49:17 103:19
careful 97:7	150:3,5,10,10,13	105:14,23	159:19 164:17
218:3	150:14 151:4,10	143:22,23 148:8	174:11 180:24
carefully 33:15	153:5,13 158:20	153:18 158:4,8	180:25 206:21
33:17,20 51:22	158:20 164:23	161:15 166:2	certainly 8:5 9:3
carolina 139:9	165:3,4,19	171:1 177:15	10:11 14:9
141:24	166:15,23 167:2	178:11,24,25	15:16 20:9,14,22
carson 59:14,16	168:4 169:2,7	179:13 184:10	29:5 36:24 47:5
cart 22:20 23:16	170:25 171:4,4	184:11,11 207:8	47:16 56:5
24:16	172:2 174:18,19	212:2 230:20	68:23 92:11
case 1:4 5:10	176:12 177:5	categories 52:18	164:13 193:11
9:17 18:12	178:10,14	53:6,10,14 54:24	193:17 209:2

[certainly - clerks]

211:22 217:23	201:18 202:13	48:20 60:12	clarity 55:18
226:6 234:2	201:18 202:13	churn 87:19	clark 18:3
certificate 236:1	charging 199:13	circles 71:22	clean 9:10
certifications	199:25 200:6	circuit 23:4	clear 9:5 25:6
18:7	216:12	40:14 78:22	65:8 79:9 82:22
certified 236:5	chart 53:10,17	80:15 168:2	110:23 136:23
certify 236:7,16	173:14 176:22	207:25	159:11 180:12
cetera 109:4	182:12	circumstance	220:1,4 222:25
chain 3:23	charts 186:16	79:14 80:9	225:22 234:7
challenge 153:13	chat 48:15	146:15	clearly 184:9
153:20 155:7,23	chatted 171:12	circumstances	clerical 95:20
211:12	173:16	185:19	101:20 106:12
challenged 80:13	check 30:24 33:4	city 107:16	118:17 212:19
chance 17:9	35:11,14 49:6	197:20,21	clerk 11:23
change 11:2 16:8	77:3,4 95:13,15	civil 13:15 14:3	21:21,23 23:18
83:20 87:11,16	97:8 102:12	14:6,22 37:24	23:21 24:10
93:18 101:18	108:15 139:13	44:7,24,24 50:7	25:20,23 30:20
176:17	157:23 180:23	50:10,11,12,13	31:19,20 32:4
changed 10:22	212:19	52:3,12,12,14	81:1 85:21
49:4 61:21 77:7	checked 225:20	54:22 55:14	118:17 120:10
84:13	checking 94:15	56:23 60:19	120:12 122:15
changes 13:13	139:22	90:8,16 92:18	122:22 144:25
39:3 49:11	checks 118:17	93:5,22 94:3,13	150:24 168:20
171:7 230:17	chief 21:13	95:6,11 105:14	179:9 194:5
changing 58:16	24:10,11 26:7	105:22 112:25	196:20,25 197:7
characterization	60:13 141:13	117:2 119:20,21	203:16 206:10
89:10	182:22 206:12	129:7,23 150:1	230:10 231:4
characterize	223:3	150:16 151:24	233:11
103:25	chiefs 50:23	154:20,23	clerk's 118:5
characterizing	60:11,14	174:14,15 209:4	119:1 144:1
28:10	child 149:21	claims 56:6	165:17 167:13
charge 167:17	choice 169:16	57:10	clerks 82:25
192:15 199:16	choked 163:12	clara 206:4	143:21 162:13
200:11,15,19,22	163:15	clarify 9:8 11:14	162:18,24 163:3
201:7 207:11	choose 206:6	110:20 111:1	163:24 164:9,13
215:14	chris 2:24 5:15	119:18 121:15	167:16 179:12
charged 164:16	21:23 24:12,13	224:4	188:14,15
164:21 200:2	25:19 37:18		198:25 199:1
1521 200.2			1,0.20 1,,.1

William L Girdner November 9, 2022

[clerks - complaint]

200:25 201:20	120.6 24 120.22	asllasted 105.11	20
	129:6,24 130:23 130:25 131:13	collected 195:11	common 56:10 80:24 96:3
202:3 205:16,18		collecting	
205:23 206:6,17	131:20,24 132:9 132:10 146:3,6		109:5 120:1
206:24 207:1,16	· · · · · · · · · · · · · · · · · · ·	collections 55:1	133:9 146:24
208:11,22 212:6	147:17,23	college 18:1	191:14 192:5
212:7,12,18	148:16 149:25	color 176:18	213:10,21
213:2 215:2	150:16 151:6,12	183:12 184:5	commonly
230:21,22	151:22 158:23	column 113:8	108:18 183:5
client 11:17	158:24 160:23	176:5 180:4	208:1
216:2	160:25 175:17	181:3,12 182:4,9	communication
clients 156:23	184:6 210:24	182:11 186:6	107:22,25 110:1
close 69:25	211:17 213:11	columns 174:17	111:10,12,15
104:23 131:21	214:15 215:8	174:22	114:12,14,25
132:25 142:15	217:1,12,18,24	come 51:25 69:4	200:13 217:16
171:17 179:22	218:19 219:24	74:19 75:18	222:14
180:2 214:7	226:1 227:9,9	129:19 180:25	communications
cns 3:22,24 9:21	233:6,12	192:10 198:5	109:11 110:22
13:10 18:14	cns's 9:22 32:21	216:3	111:5 112:18,20
21:7 26:13	38:13 40:5 41:7	comes 82:16	114:6 134:18
28:22 32:16	41:14 43:23	117:23 157:8	136:4,4 213:11
39:23 40:6,23,23	46:16 48:10	comfortable	214:15,22 217:1
47:8,9,18,19	54:5 63:5 65:2	10:23 14:12	217:11,24
48:16,25 49:14	87:16 91:11	coming 54:9	218:19 225:25
52:2,10,25 57:19	110:1 115:2	72:11 111:9	comp 56:14
57:25 60:9,18	118:21 119:13	190:11 191:15	companies 187:6
62:23,24 63:1	153:22 175:16	commenced	company 2:6
78:15 86:17	184:24 196:4,9	85:16	5:17 70:1 171:2
88:10 89:2 90:3	207:14 209:13	commencing 2:9	187:3
90:3,12 91:23	213:19 214:2	comment 226:24	competitors
92:11 93:3,9,11	218:21 226:10	commented	156:24
93:15 95:4,10	coast 158:8	106:24	complaint 4:3
99:9 101:1	code 96:8 186:9	comments 11:7	29:21 30:18,24
103:4,7,17	codes 52:22	commercial	36:4,17,21 40:20
104:10 106:9	53:18 197:11	219:17	42:5,8,21,21
107:21,24,25	coding 183:12	commission	43:12,13,16 44:9
108:4 109:11,14	184:5	235:25 236:25	45:1 117:5
109:23 110:17	coffee 45:13	committee 112:3	118:5 119:19,21
111:4,15 112:19	234:14		121:4 123:16

[complaint - contract]

133:20 143:11 compliant conducted 2 143:15,19 144:5 132:10 confidential 144:16 150:17 complicated 39:11,13 154:22 165:18 76:25 confidentiality 181:15 212:12 comply 49:14 213:21,24 2 212:17 213:2 component 214:16 226:4,14,21 81:13,13 confirm 55:2 227:7 233:8 compromise 200:23 201:0	consistent 125:6 131:8 209:7 y consisting 235:9 14:9 constant 87:19 constantly 93:17 101:18
144:16 150:17 complicated 39:11,13 154:22 165:18 76:25 confidentiality 181:15 212:12 comply 49:14 213:21,24 2 212:17 213:2 component 214:16 226:4,14,21 81:13,13 confirm 55:2 227:7 233:8 compromise 200:23 201:0	consisting 235:9 constant 87:19 constantly 93:17 101:18 constitution
154:22 165:18 76:25 confidentiality 181:15 212:12 comply 49:14 213:21,24 2 212:17 213:2 component 214:16 226:4,14,21 81:13,13 confirm 55:2 227:7 233:8 compromise 200:23 201:0	14:9 constant 87:19 constantly 93:17 101:18 constitution
181:15 212:12 comply 49:14 213:21,24 2 212:17 213:2 component 214:16 226:4,14,21 81:13,13 confirm 55:2 227:7 233:8 compromise 200:23 201:0	14:9 constant 87:19 constantly 93:17 101:18 constitution
212:17 213:2 component 214:16 226:4,14,21 81:13,13 confirm 55:2 227:7 233:8 compromise 200:23 201:0	25 101:18 constitution
226:4,14,21 81:13,13 confirm 55:2 227:7 233:8 compromise 200:23 201:0	25 101:18 constitution
•	
	152:3,12 208:7
complaints 21:1 82:23,24 confirmation	
21:7 22:18 compulsive 165:17	constitutionality
23:21 24:15,24 227:14 confirming	178:5
26:2,7,14 27:9 computer 61:14 150:5	consultation
29:16 31:10 185:9 conflict 162:	16 207:12
37:9 40:1,24 concept 175:19 166:4,6	consulted 207:9
41:4,9,14,18 concern 13:23 conform 13:	14 contact 51:1
52:9,25 55:6 213:22 confuse 130:	contained
58:5 60:19 63:2 concerned 13:13 confused 189	9:16 134:15 235:11
79:13 80:3,20 concerning confusion	235:13
84:18 90:8,16 111:14 231:21 218:15	contains 236:14
109:16,25 117:2 concerns 58:7 connecticut	69:1 contempt 57:6
124:16 129:8,19 195:2,19 196:1,3 connection	content 18:19
129:23 131:1,22 210:25 213:12 60:18	contents 235:10
131:25 132:11 213:13,17,19 consequence	contest 8:9
150:1 151:25 214:10,16 52:7	context 7:3,5 8:1
154:20,23 161:1 concluded conservatorsh	11:25 77:23
167:22 174:15	115:8 118:4
181:14 209:5,11 concludes conservatorsh	ni 178:14 202:15
211:18 212:5 234:19 56:17	202:16,17
complete 10:9 conclusion 41:25 consider 114	4:20 contexts 149:8
15:12 16:2,19 44:11 45:4 129:6 178:1	
17:5 48:8 143:1 58:12 119:5,25 185:8	86:17 126:5
completed 16:24 121:10 124:19 considered 9	9:21 continued 4:1
74:2 145:3	13 continues 232:24
166:18 211:9 133:12 148:4 179:21	continuing 10:23
228:5 191:14 202:9 considering	85:16
completes 34:10 229:15 51:20 125:1	contract 55:1
completion condition 15:21 147:21	83:7 190:17,19
166:19,21 212:3 15:25	192:2

[contractors - county]

10.2	22 21 22 2 12	175 14 170 2	100 10 01
contractors 19:3	32:21 33:3,12	175:14 179:3	189:12,21
19:6	34:6,20,21 35:2	181:17,25	192:15 201:5,7
contradictory	35:4,5,10 37:9	182:14,20	204:17,22,25
165:20	37:10 40:2,4	186:11 187:4	216:9,18,20
contrary 24:5	41:9 42:6,17	189:6 191:20	costs 60:22 61:8
26:25	43:25 47:20,21	192:11,16	61:11,11,14,14
controlled	47:25 49:15,22	193:12 195:12	62:22 63:5
134:10	53:16 57:10,11	200:11 201:19	90:20 214:23
controversies	57:23,24 59:6	202:14 207:18	215:5,8,9,12,13
90:1	61:21 62:4,5	208:12,22 209:6	215:16 220:8
conversation	63:4,16 64:17	209:11 210:3,9	council 197:20
14:18 107:21	68:3 78:24 80:6	211:1 215:15	197:21
112:22 113:2	82:7 85:23 89:8	216:7 217:5,19	counsel 5:18
138:25 196:20	92:13 96:18	217:21,22,22	13:10 38:13
198:9,10,21	97:2,3,24 102:8	218:2,14,17	48:2 54:4
218:4	103:20 105:16	219:15,16	110:22,24
conversations	105:17 106:2,3,8	223:25 224:5	138:18 218:5
21:12 22:14	107:19 116:14	232:7 235:14	222:21 228:17
24:9 25:10	116:22 117:4,11	corrected 228:22	232:1
188:15 197:6	117:12 118:22	235:14	count 179:2
200:10 217:6	120:17 121:6	correcting	202:4
218:9	122:13,17 123:2	106:15	counter 24:1
conviction 57:4	123:13,24 125:2	corrections	30:12 32:9,12
convincing	125:11 126:19	10:15 213:6	80:21 117:7,9,11
195:8	126:20,23 127:4	235:16	117:15 118:15
copies 220:18	128:12,14,19	correctly 18:19	118:16 119:8
copy 23:22 63:2	129:25 131:3	28:20 33:9	167:22 168:5,19
63:3 113:13	133:21 134:12	59:20 76:22	209:18,25
205:9 219:22	134:13 135:22	90:19 92:7	counties 20:23
220:6 232:14	135:24,25 136:7	96:21 101:13	22:6 209:10
correct 9:13	136:13,20,25	106:1 111:9	country 51:18
10:16 11:13	139:14 140:6	corrects 150:13	68:14,16 76:17
19:11,12,16,19	142:20 143:9	correspondence	92:1 161:15
19:21 20:13,18	144:4 145:12,13	21:20,20 22:15	163:16
21:8 25:18 27:2	145:22,24,25	37:18	county 2:8 22:2
27:10,14 28:7,25	147:19 149:2,5	cost 60:18,24	22:24 23:2,3
29:4,22 31:3,4,9	151:9 152:21	61:5 158:16	24:15 26:15
31:11,25 32:17	153:5 155:11	188:11,24 189:1	28:1 66:3,21

[county - courts]

67:9 70:4 72:19	75:16 76:9,10	191:17 193:2	185:24 228:18
72:24 73:15,22	79:1,3 80:14,17	195:2,11 198:12	232:2 233:14
73:23 75:6,17	81:10 82:5	199:9 203:15,18	courthouses
76:10,12,15,18	83:20 84:1,5,12	204:2 205:2,6,23	20:1 37:21
79:22 83:9	85:10 87:5 92:9	206:9 207:1,8	courts 1:8 10:18
88:18,19 90:25	92:10,12,13,23	208:22 211:12	23:5,7,9,12 35:8
182:1 197:18,18	92:24,24 93:4,24	212:5,6,7,11	35:12,17 37:7,13
198:20 199:13	94:1,14 95:18	215:17 216:3,10	37:25 40:8,11,12
206:21,22 209:8	96:7,23 97:18,22	216:20 218:22	40:12,13,16 41:5
210:4,10 235:3	99:20 103:5	221:1,15 223:15	43:9,20 45:2
236:3	105:23,25 109:7	229:20 230:9	58:3 64:21,22
couple 35:20	116:5 117:8,9	232:14,16 233:6	65:1,3,12,25
102:19 104:12	118:15 120:6,17	court's 11:24	66:1 67:9,12
186:25 190:18	123:7 126:8	29:12 75:4	69:20,24 77:11
210:12 223:12	130:6 131:5	96:17 118:6	78:2,5 79:6
course 8:19 17:8	132:24 133:2,3	133:21 135:6	80:11 82:13
17:8 18:24	143:13 144:7,15	143:16 144:2	83:23 84:3
22:11 33:18,23	144:25 146:23	145:1 146:10	87:13 89:6
46:25 51:17	149:18 151:1,2	150:3 167:11	92:15,16 94:6,7
57:9 76:5 93:1	153:13,19	177:11	94:11 95:4,10
99:22 136:5	154:21,23 155:7	courtesy 114:24	96:14 97:4 99:2
163:22 164:9	155:24 156:17	courthouse 1:4	99:4,8,11,14
167:5 178:20	157:11 158:8,17	3:12,14,19 4:5	100:4,18 101:1
231:24	159:6 160:21	5:9,21 14:21,25	103:3,4 109:15
court 1:1 2:7	161:8 162:14,18	17:17 18:22	113:13 128:2
5:11 6:2 9:6	162:18,24 163:4	19:15 20:22	129:11,22
11:4,5 21:24	163:24 164:7,8	30:17 32:24	130:22 134:19
22:22 23:18,21	164:13,18	35:6 37:5 50:8	135:4,17 136:16
29:18,19,20,24	165:22 168:19	50:11 60:14	136:19,24
30:2,3,7,20	168:20 169:22	63:12,15 64:3,7	148:12,13,15
32:12 34:18,23	174:20 175:6,10	64:12 68:21	152:3,6,10 158:4
38:7,18 39:1,23	175:12 176:14	72:8 75:3 87:24	158:11 160:19
42:12 43:5	176:19 177:3,13	89:11,22 90:21	160:22 161:2,25
44:14 45:7	178:1,2,18 179:3	90:21,22 105:13	162:21 163:6,6
52:17 56:2 57:6	179:6,8,13,18	105:18,20,21	163:11 164:4
61:10 63:19	180:16 182:1,13	154:19,22 155:4	169:9,13,14,16
64:23 69:5,17	182:13 185:22	156:21,22	170:4,6,7,8,11
70:1,5,6 74:5,5	188:19 190:23	157:13 168:5	171:3 185:12
		1	

[courts - declaration]

187:1,6 188:11	created 93:9	daily 48:16	211:10,13,17
189:19,20 194:1	103:4 173:19	49:14 90:4,13	225:21 235:8,21
194:22 195:14	174:22 182:19	156:9	236:18
195:20 196:5,6	creating 164:24	dakota 139:8	day's 36:15
198:12 199:8	creation 167:16	220:15 221:1,16	days 30:16 155:1
205:25 206:2,8	167:17	221:17 222:5	159:1 167:6
208:2,5 210:2,21	credit 170:22	223:16	168:18 175:5,6
211:16 212:1	171:2	darn 161:12,16	175:10,10,13
213:10,12,12,13	creditor 55:1	162:6	176:13,14,19,19
214:11,15,22	criminal 50:5,12	data 103:18,19	176:20,23 177:3
215:9 216:9,19	cross 30:7 32:11	104:1 134:15	177:12,13,18,20
223:20 225:8,8	117:10 119:7	135:20 136:17	178:2,2,18,18
225:13 229:25	crossed 29:11	136:22 137:20	183:25 184:2
233:7	32:9 167:22	database 36:22	219:18
cover 63:10	168:5	230:17	dc 89:23
90:21,22 91:4,10	crosses 117:7,9	date 5:4 6:16	dcn 1:4 5:10
98:9 102:18	117:14 118:5,15	58:1 117:22	deadlines 11:20
148:22	209:17	148:9,10 174:18	126:8
coverage 20:3	crr 1:25 236:23	174:19,19 175:5	deal 11:23
60:17 89:20	cruz 67:2,4 85:6	176:13 180:3,6	156:21 166:8
148:21 158:7	csr 1:25 236:23	181:2,11 186:4,5	debtor 55:1
covered 50:13	cup 45:13	205:8 234:21	decades 47:13
96:19	curious 102:16	dated 3:23	deceptive 202:6
covering 21:24	current 159:3	day 2:9 22:21,22	decide 122:5
95:18 148:13	194:4	22:23 24:19,25	decided 89:18
covers 20:5	currently 37:14	25:21,22,23 26:3	decision 4:6
51:12 67:19	58:4 71:20	26:8,15 34:11	68:25 84:14
78:8 148:16	78:15 84:3 94:2	35:25 36:6 40:2	90:22 214:5
cozin 215:23	94:13 95:5	62:9,10 80:12,12	decisions 18:22
cracking 172:2	140:5 231:5	153:7,20 155:8	88:9
crawlers 108:22	cut 101:4	155:24 157:24	declaration 3:19
109:3	cv 1:4 5:10	164:5 175:19	4:4 46:6,10,14
crazy 185:21	cycle 156:9,11	176:4,4,7,8,10	46:15,24 61:17
197:14	d	176:13 177:5,9	168:1 171:10,13
crc 1:25 236:23	d 3:1 5:1	178:11 182:12	172:25 173:9
create 165:3	d.c. 141:21	183:21 184:10	191:16 201:15
218:15	111.21	184:11,12	202:11 203:8
		185:13 210:22	209:21 228:4,11
L	1	1	1

[declaration - diego]

228:16	177:10 179:2,25	deposition 1:13	153:10
declarations	180:1 182:13,13	2:1,4 3:12,14	describes 105:19
46:25 195:7	185:8	5:7,12,14 8:7,8	describing 27:25
205:11	delayed 77:8	9:8,25 10:24	32:7 113:11
dedicated 152:4	129:7 154:23	11:1,17 12:22	description 21:2
deep 157:7	177:16 178:24	13:9,14 16:12,16	21:14 27:8
defamation 50:2	178:25 183:21	17:2 19:10	59:24 113:19,24
defendant 1:9	184:11,12 185:4	20:11 27:19,22	155:2 180:19
2:5,18 95:23	delaying 80:11	28:6,10 33:22	designate 39:12
96:4,15,24 181:9	delays 131:5	46:5,10 47:10	designated 47:8
defendant's 3:11	132:21 151:23	48:2,14 54:21	47:18
3:13,16 104:15	155:8,24 178:5	104:21 111:3,9	designation
defendants 5:8	178:23 182:13	111:17 112:21	39:11
37:1 67:16	delete 219:19	123:23 124:1,5	designee 5:7
defer 20:15,24	deleted 219:14	126:6 135:14	234:21
23:8,11 27:7	219:19 222:8	136:1,5,13 154:1	designs 184:8
define 131:3	224:17	161:23 173:14	desk 118:5
158:23	deletion 225:4	194:12 195:25	detail 102:17
defined 132:5	demand 222:7	202:20 205:1,5	details 142:8
defines 154:19	222:10	215:23 219:5	194:19
definition 120:1	demanded 32:25	220:23 225:1	determination
120:14 133:10	demanding	226:19 228:14	178:4
133:16 148:2	197:12	229:4 231:20,25	determine 10:13
159:2,15 180:5	democracy	232:18 234:20	57:19,25 128:6
229:17,19,22	152:7 160:21	234:23 235:8,10	141:7 178:17
232:3	208:6	236:9,11,15	determined 52:2
definitions 52:19	_	depositions 8:1,3	
52:20 119:16	114:10	deputy 143:21	devaluing 152:9
degree 18:2,4	depending	150:24 162:18	develop 37:12,24
degrees 18:11	176:18	230:22	93:15
dekalb 206:21	depends 63:23	derrick 112:6	developed 37:5
delay 40:21,23	64:15	115:14,18,23	73:5 187:16
84:17 129:23	depo 47:2	describe 55:14	diaz 3:24 223:2
130:23 131:8,13	deponent 47:17	92:17 114:18	223:7 224:21
152:9,24 155:4	depose 235:6	described 20:1	dictated 139:2
155:12 175:4,5,5	deposed 6:24	28:16 37:16	diego 72:24 73:2
175:16 176:2,4,8	7:25 8:2 234:18	57:23 112:9	73:7,13,15
176:13,22 177:3		146:16 152:19	

[difference - duke]

differences 48:21 114:17 96:3,10,13,22 164:17 167:10 170:18 166:25 208:19 97:21 101:20 198:25 199:2,3,9 different 7:5 215:6,8 102:3 104:2,4 199:10,14 35:11 43:22 discussing 37:19 108:12 118:20 229:23 230:1 63:22 64:22,23 38:10 199:1 146:8,23 162:14 doing 9:4,9 66:3 68:2 69:24 203:15 215:16 164:24 167:15 28:18 36:6 51:6 78:9 79:5 81:22 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 84:6 108:20 157:20 216:8 174:19 179:12 87:7 94:2,12 162:14 139:23 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 161:25 167:3,14 169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 169:2 187:1,3 19:6 177:24 24:7 26:4,9,16 156:24,25 160:3 171:21 187:21 187:23 189:9 dight 77:1 60:23 61:2 docketed 24:2,4 137:22 139:19 director 18 11.11 25:11,118:12	difference 91:20	discussed 13:7	95:7,13,15,21,23	134:20,22
different 7:5 215:6,8 102:3 104:2,4 199:10,14 35:11 43:22 discussing 37:19 108:12 118:20 229:23 230:1 52:22 53:6,18 discussion 13:2 120:5 139:22 231:22 233:10 66:3 68:2 69:24 203:15 215:16 164:24 167:15 28:18 36:6 51:6 78:9 79:5 81:22 discussions 167:17,20 51:23 56:22 84:6 108:20 157:20 216:8 174:19 179:12 87:7 94:2,12 126:14 139:23 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 145:16 148:24 dismissed 88:3 181:2,5,7,8 99:17 100:25 169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 distinction 29:8 26:21 30:9 171:21 187:21 22:10 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 direction 23:13 42:16 16s:8,12 director 18 5:11,11 7:8,12 55:13 104:18 doum	differences	48:21 114:17		
35:11 43:22 discussing 37:19 108:12 118:20 229:23 230:1 52:22 53:6,18 discussion 13:2 120:5 139:22 231:22 233:10 66:3 68:2 69:24 203:15 215:16 164:24 167:15 28:18 36:6 51:6 78:9 79:5 81:22 discussions 167:17,20 51:23 56:22 84:6 108:20 157:20 216:8 174:19 179:12 87:7 94:2,12 126:14 139:23 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 145:16 148:24 dismissed 88:3 181:2,5,7,8 99:17 100:25 161:25 167:3,14 dispute 27:12 232:15 101:2 116:11 169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 differently 104:1 distinction 29:8 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 disemana 64:14 district 1:1,2 docketing 25:4 196:4 direct 232:21 distinguishes 165:3 167:15 document 31:20 downinate 190:21 director 1:8 5:11,11 7:8,12 7:13 10:18 105:10 117:23 downfull 199:4,6 double 139:13 doubt 194:8 download 63:2 disagree 10:17 disclosed 147:17 disclosed 147:17 disclosing 80:17 157:14,15 225:15 229:12 discument 31:20 document 31:20 download 63:2 disagree 10:17 disclosing 80:17 157:14,15 225:15 229:12 discument 31:20 document 31:20 download 63:2 disagree 10:17 disclosing 80:17 157:14,15 225:15 229:12 discument 31:20 double 194:8 download 63:2 disagree 10:17 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 drip 185:25 drop 180:24 drip 185:25 document 47:1 docu	170:18	166:25 208:19	97:21 101:20	198:25 199:2,3,9
52:22 53:6,18 discussion 13:2 120:5 139:22 231:22 233:10 63:22 64:22,23 38:10 199:1 146:8,23 162:14 doing 9:4,9 66:3 68:2 69:24 203:15 215:16 164:24 167:15 28:18 36:6 51:6 78:9 79:5 81:22 discussions 167:17,20 51:23 56:22 84:6 108:20 157:20 216:8 174:19 179:12 87:7 94:2,12 126:14 139:23 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 161:25 167:3,14 169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 189:25 202:3 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 doreting 25:4 dominate 190:21 director 1:8 5:11,11 7:8,12 55:13 104:18 door 171:17 188:3,4 215:24 197:24 198:4 3:15 22:1 120:17 12:4 dowhel 139:13 double 139:13 195:23	different 7:5	215:6,8	102:3 104:2,4	199:10,14
63:22 64:22,23 38:10 199:1 146:8,23 162:14 doing 9:4,9	35:11 43:22	discussing 37:19	108:12 118:20	229:23 230:1
66:3 68:2 69:24 203:15 215:16 164:24 167:15 28:18 36:6 51:6 78:9 79:5 81:22 discussions 167:17,20 51:23 56:22 84:6 108:20 157:20 216:8 174:19 179:12 87:7 94:2,12 126:14 139:23 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 145:16 148:24 dismissed 88:3 181:2,5,7,8 99:17 100:25 161:25 167:3,14 dispute 27:12 232:15 101:2 116:11 169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 differently 104:1 distinction 29:8 26:21 30:9 171:21 187:21 digit 77:1 60:23 61:2 docketing 25:4 196:4 direct 23:21 distinguishes 165:3 167:15 door 171:17 director 1:8 15:11,17 7:8,12 55:13 104:18 double 139:13 discotor 1:8 23:18 34:19,19 122:11,16 133:4 downfall </td <td>52:22 53:6,18</td> <td>discussion 13:2</td> <td>120:5 139:22</td> <td>231:22 233:10</td>	52:22 53:6,18	discussion 13:2	120:5 139:22	231:22 233:10
78:9 79:5 81:22 discussions 167:17,20 51:23 56:22 84:6 108:20 157:20 216:8 174:19 179:12 87:7 94:2,12 126:14 139:23 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 145:16 148:24 dismissed 88:3 181:2,5,7,8 99:17 100:25 161:25 167:3,14 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 differently 104:1 distinction 29:8 26:21 30:9 171:21 187:21 222:10 43:24 45:8 166:22 167:23 187:23 189:9 196:4 digit 77:1 distinguishes 165:3 167:15 dooketing 25:4 118:8,22 directly 115:6 district 1:1,2 document 31:20 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 disagree 10:17 39:23 54:23 15:17 164:22	63:22 64:22,23	38:10 199:1	146:8,23 162:14	doing 9:4,9
84:6 108:20 157:20 216:8 174:19 179:12 87:7 94:2,12 126:14 139:23 dishonest 20:12 179:14 180:21 96:14 98:4 99:5 145:16 148:24 dismissed 88:3 181:2,5,7,8 99:17 100:25 161:25 167:3,14 dispute 27:12 232:15 101:2 116:11 169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 differently 104:1 distinction 29:8 26:21 30:9 171:21 187:21 222:10 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 dominate 190:21 direct 232:21 distinguishes 165:3 167:15 door 171:17 directly 115:6 district 1:1,2 document 31:20 216:1 directly 115:6 district 1:1,2 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 120:17 121:4 double 139:13 197:24 198:4 13:15 22:1 22:11,16 133:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19	66:3 68:2 69:24	203:15 215:16	164:24 167:15	28:18 36:6 51:6
126:14 139:23	78:9 79:5 81:22	discussions	167:17,20	51:23 56:22
145:16 148:24 dismissed 88:3 181:2,5,7,8 232:15 101:2 116:11 169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 differently 104:1 distinction 29:8 26:21 30:9 171:21 187:21 222:10 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 dilemma 64:14 81:11 25:14 118:18,22 dominate 190:21 direct 232:21 distinguishes 165:3 167:15 door 171:17 188:3,4 215:24 directly 115:6 district 1:1,2 document 31:20 docketing 25:4 216:1 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 double 139:13 double 139:13 double 139:13 double 194:8 downfall 199:4,6 downfall 199:4,6 downfall 199:4,6 downfall 199:4,6 downfall 199:3 219:1 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing	84:6 108:20	157:20 216:8	174:19 179:12	87:7 94:2,12
161:25 167:3,14	126:14 139:23	dishonest 20:12	179:14 180:21	96:14 98:4 99:5
169:2 187:1,3 54:7 55:2 60:1 docketed 24:2,4 137:22 139:19 189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 differently 104:1 distinction 29:8 26:21 30:9 171:21 187:21 222:10 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 dilemma 64:14 81:11 25:14 118:18,22 dominate 190:21 direct 232:21 distinguishes 168:8,12 document 31:20 directly 115:6 district 1:1,2 document 31:20 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 double 139:13 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 21:23 34:20,23,24 15:7 164:22 drill	145:16 148:24	dismissed 88:3	181:2,5,7,8	99:17 100:25
189:25 202:3 119:6 177:24 24:7 26:4,9,16 156:24,25 160:3 differently 104:1 distinction 29:8 26:21 30:9 171:21 187:21 222:10 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 dilemma 64:14 81:11 25:14 118:18,22 dominate 190:21 direct 232:21 distinguishes 165:3 167:15 door 171:17 directly 115:6 district 1:1,2 document 31:20 directly 125:1 125:1 120:1	161:25 167:3,14	dispute 27:12	232:15	101:2 116:11
differently 104:1 distinction 29:8 26:21 30:9 171:21 187:21 222:10 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 196:4 dilemma 64:14 81:11 25:14 118:18,22 dominate 190:21 direct 232:21 distinguishes 165:3 167:15 door 171:17 direction 236:13 42:16 document 31:20 216:1 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 double 139:13 197:24 198:4 13:15 22:1 120:17 12:4 downfall 199:48 202:4 203:18 23:18 34:19,19 122:11,16 133:4 downfall 199:4,6 disagree 10:17 39:23 54:23 169:1 170:10 165:14 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 <	169:2 187:1,3	54:7 55:2 60:1	docketed 24:2,4	137:22 139:19
222:10 43:24 45:8 166:22 167:23 187:23 189:9 digit 77:1 60:23 61:2 docketing 25:4 196:4 dilemma 64:14 81:11 25:14 118:18,22 dominate 190:21 direct 232:21 distinguishes 165:3 167:15 door 171:17 direction 236:13 42:16 document 31:20 216:1 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 double 139:13 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 downfall 199:4,6 215:23 34:20,23,24 151:7 164:22 drill 162:10 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 147:23 164:8 182:2 230:7,16 231:1 drying 185:25 drying 185:25 38:11 39:3 46:8 230:9 documentation 25:11 111:21 due 151:23 40cket 25:23 60cuments 47:1 5:24,24 6:11	189:25 202:3	119:6 177:24	24:7 26:4,9,16	156:24,25 160:3
digit 77:1 60:23 61:2 docketing 25:4 196:4 direct 232:21 distinguishes 165:3 167:15 door 171:17 direction 236:13 42:16 168:8,12 door 171:17 director 1:8 5:11,11 7:8,12 document 31:20 216:1 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 double 139:13 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 drying 185:25 38:11 39:3 46:8 230:9	differently 104:1	distinction 29:8	26:21 30:9	171:21 187:21
dilemma 64:14 direct 81:11 distinguishes 25:14 118:18,22 door 171:17 dominate 190:21 door 171:17 direction 236:13 directly 42:16 district 1:1,2 document 31:20 document 31:20 double 188:3,4 215:24 216:1 director 1:8 18:190:8,23 district 7:13 10:18 for 10:17 10:18 for 10:10 117:23 for 10:10	222:10	43:24 45:8	166:22 167:23	187:23 189:9
direct 232:21 distinguishes 165:3 167:15 door 171:17 direction 236:13 42:16 168:8,12 188:3,4 215:24 directly 115:6 district 1:1,2 document 31:20 216:1 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 doubt 194:8 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 drying 185:25 38:11 39:3 46:8 230:9 documentation 25:11 111:21 due 151:23 divorce	digit 77:1	60:23 61:2	docketing 25:4	196:4
direction 236:13 42:16 168:8,12 188:3,4 215:24 directly 115:6 district 1:1,2 document 31:20 216:1 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 doubt 194:8 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 162:10 disagree 10:17 39:23 54:23 169:1 170:10 165:14 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 drying 185:25 38:11 39:3 46:8 20:9 documentation 25:11 111:21 duces 3:14 52:21,24 153:5 divorce 56:4 53:9 61:12 96:1 5:24,24 6:11	dilemma 64:14	81:11	25:14 118:18,22	dominate 190:21
directly 115:6 district 1:1,2 document 31:20 216:1 director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 doubt 194:8 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 162:10 disagree 10:17 39:23 54:23 169:1 170:10 165:14 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 206:9,24 226:22 232:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 56:1 47:1 53:9 61:12 96:1 5:24,24 6:11	direct 232:21	distinguishes	165:3 167:15	door 171:17
director 1:8 5:11,11 7:8,12 55:13 104:18 double 139:13 188:18 190:8,23 7:13 10:18 105:10 117:23 doubt 194:8 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 162:10 disagree 10:17 39:23 54:23 169:1 170:10 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 230:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 53:9 61:12 96:1 5:24,24 6:11	direction 236:13	42:16	168:8,12	188:3,4 215:24
188:18 190:8,23 7:13 10:18 105:10 117:23 doubt 194:8 197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 162:10 disagree 10:17 39:23 54:23 169:1 170:10 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 147:23 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 206:9,24 226:22 232:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	directly 115:6	district 1:1,2	document 31:20	216:1
197:24 198:4 13:15 22:1 120:17 121:4 downfall 199:4,6 202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 162:10 disagree 10:17 39:23 54:23 169:1 170:10 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 147:23 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 38:11 39:3 46:8 52:22,24 226:22 232:9 documentation duces 3:14 52:21,24 153:5 19 196:14 227:25 divorce 56:4 documents 47:1 duke 2:18,19 3:5 195:19 196:14 227:25 53:9 61:12 96:1 5:24,24 6:11	director 1:8	5:11,11 7:8,12	55:13 104:18	double 139:13
202:4 203:18 23:18 34:19,19 122:11,16 133:4 download 63:2 215:23 34:20,23,24 151:7 164:22 drill 162:10 disagree 10:17 39:23 54:23 169:1 170:10 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 38:11 39:3 46:8 52:21,24 153:5 230:9 documentation 25:11 111:21 duces 3:14 52:21,24 153:5 19 196:14 227:25 divorce 56:4 divulge 223:9 documents 47:1 227:25 documents 47:1 53:9 61:12 96:1 5:24,24 6:11	188:18 190:8,23	7:13 10:18	105:10 117:23	doubt 194:8
215:23 34:20,23,24 151:7 164:22 drill 162:10 disagree 10:17 39:23 54:23 169:1 170:10 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 147:23 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 38:11 39:3 46:8 52:21,24 153:5 230:9 documentation documentation duces 3:14 52:21,24 153:5 19 196:14 227:25 divorce 56:4 divulge 223:9 documents 47:1 folked 25:23 36:21 11:2 96:1 55:24,24 6:11	197:24 198:4	13:15 22:1	120:17 121:4	downfall 199:4,6
disagree 10:17 39:23 54:23 169:1 170:10 165:14 disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 206:9,24 226:22 232:9 drying 185:25 38:11 39:3 46:8 230:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	202:4 203:18	23:18 34:19,19	122:11,16 133:4	download 63:2
disclosed 147:17 67:9 79:1 80:14 199:3 219:1 driving 217:15 disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 206:9,24 226:22 232:9 drying 185:25 38:11 39:3 46:8 230:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	215:23	34:20,23,24	151:7 164:22	drill 162:10
disclosing 80:17 157:14,15 225:15 229:12 drop 180:24 147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 206:9,24 226:22 232:9 drying 185:25 38:11 39:3 46:8 230:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	disagree 10:17	39:23 54:23	169:1 170:10	165:14
147:23 164:8 182:2 230:7,16 231:1 181:1 discovery 38:8 206:9,24 226:22 232:9 drying 185:25 38:11 39:3 46:8 230:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	disclosed 147:17	67:9 79:1 80:14	199:3 219:1	driving 217:15
discovery 38:8 206:9,24 226:22 232:9 drying 185:25 38:11 39:3 46:8 230:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	disclosing	80:17 157:14,15	225:15 229:12	drop 180:24
38:11 39:3 46:8 230:9 documentation duces 3:14 52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	147:23	164:8 182:2	230:7,16 231:1	181:1
52:21,24 153:5 divorce 56:4 25:11 111:21 due 151:23 195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 53:9 61:12 96:1 5:24,24 6:11	discovery 38:8	206:9,24 226:22	232:9	drying 185:25
195:19 196:14 divulge 223:9 documents 47:1 duke 2:18,19 3:5 227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	38:11 39:3 46:8	230:9	documentation	duces 3:14
227:25 docket 25:23 53:9 61:12 96:1 5:24,24 6:11	52:21,24 153:5	divorce 56:4	25:11 111:21	
	195:19 196:14	divulge 223:9	documents 47:1	duke 2:18,19 3:5
	227:25	docket 25:23	53:9 61:12 96:1	5:24,24 6:11
discuss 12:3,5,12 37:8 81:3,3 104:12 109:20 10:19 11:10	discuss 12:3,5,12	37:8 81:3,3	104:12 109:20	10:19 11:10
198:6 92:14 94:15 117:1 124:16 12:9,14,23 13:6	198:6	92:14 94:15	117:1 124:16	12:9,14,23 13:6

[duke - emails]

15 5 25 6 20 25	100 10 104 21	05.24.100.17.24	66 4 1 227.7
15:5 27:6 29:25	189:18 194:21	85:24 109:17,24	effectively 227:7
31:18 34:1,2	195:9 196:2	115:18 118:4,11	effort 85:25
42:4 43:8 44:6	200:21 201:14	129:7,16,23	153:15,17 222:6
44:22 45:11,12	202:19 203:6	134:9,11,16,25	efm 80:25
45:14,23 48:12	205:14 209:2	135:2 142:22	eight 65:23
48:15 53:8	210:7,21 211:16	143:5,8,12,20,25	69:24 202:3
54:19,22 55:19	218:18 220:20	148:9,20,24	205:16,18
58:22 65:10,18	220:24 223:12	149:1,13 158:2	eighth 80:15
90:3 92:6 93:2	224:9 225:2	167:9,14 169:5	168:1 207:25
97:25 98:4,8,12	226:20 227:12	171:4 187:10,16	either 33:2 44:24
98:19 102:25	227:23 228:6,10	192:3 194:9	86:16 87:14
103:16 104:3,13	228:15 229:19	197:19 198:7	120:18 131:21
104:22 110:9,12	230:6,15 231:6	204:5 207:17	147:22 151:4
110:15 111:2	231:11 232:19	220:16 230:21	177:25 178:8
118:11,14	233:21 234:1,17	233:9 236:5,23	182:12 183:7
119:12 120:4,23	dukeevett.com	earlier 17:1	187:2 208:9
121:14,21,23	2:22,23	123:25 124:4	214:9 217:19
122:24 123:8	duly 6:6 234:8	148:18 152:20	electronic 20:24
124:10,25 125:7	235:5 236:9	155:6 156:2	23:20 37:15
125:23 126:1,17	duty 214:3	163:9 175:12	38:6,17,25 42:16
127:16 128:24	dvorak 135:14	185:4 199:15	44:8,25 117:14
129:6 130:5,8,13	137:13 195:25	210:23 231:19	118:10 123:24
130:21 131:10	dvorak's 135:16	early 7:18 67:17	124:15 126:22
132:8,22 133:13	136:1,12 213:16	123:22 156:7	127:18 128:6,7
133:15 135:21	e	234:13	209:6
137:6,10,23	e 1:25 2:6,19,19	easier 54:15	eliminate 64:6
138:6,16 139:12	3:1,2,9 4:1 5:1,1	east 158:8	else's 87:25
139:16 140:15	22:5,7 39:1,5,8	eastern 67:9,9	email 3:23
140:19,23 141:5	39:18,19 42:11	eastward 73:22	113:15 136:4
141:6 143:3	42:20 54:24	77:9,10	218:23 219:13
144:14,22	66:2,4 70:6,7	easy 65:20	220:25 222:7
147:10 149:20	73:1 78:5,6	161:19 194:3	224:16,22
149:24 153:24	79:20,23 80:8,21	editions 156:7	emailed 115:8
154:2 161:14	80:25 81:12	editor 17:17	207:4 219:9
165:1 166:12	82:12 83:8,20	48:21	emails 115:4
168:17,21	84:4,6,7,13,24	educational	188:14,16 207:5
171:23 172:1,6	85:7,9,11,15,21	17:22 18:10	219:18
172:11,17,22,24	05.7,7,11,15,21		
	<u> </u>	<u> </u>	

[embarcadero - explain]

embarcadero	entry 56:13 57:5	194:15	executive 115:25
2:15	151:14	examination	206:12
emerging 61:10	environmental	6:10 231:17	exhibit 3:11,13
employ 86:17	50:3	233:20	3:15,16,19,21,23
90:4,12	equals 145:14	examined 236:8	4:3,4,6 12:17,22
employed 59:4	148:2 149:10	example 17:2	13:9,19 48:12,14
59:10 91:23	equivalent 67:21	35:12 39:4	48:18,24 54:20
92:8	182:7	63:25 64:11	54:21 57:23
employee 19:7	escapes 205:8	70:3 86:20	104:19,20,21
20:6,8 89:15	especially	88:17 91:14	154:1,3 173:3
employees 18:25	219:18	92:15 94:5	219:5,7,24,25
19:2	esq 2:14,19,19	99:24 129:15	220:22,23
employment	essence 113:22	137:20,21	221:18,22 222:5
55:2 87:16	essentially 99:16	146:19 150:8	223:13 224:20
89:14	106:20 145:15	158:4,7 159:7	225:1,10 226:16
encompasses	166:8 183:18	168:18 182:3	226:19 227:25
181:7	established	185:9,10 188:8	228:13,14,21
encountered	123:22	192:1	229:5,6 232:17
159:24,25	estates 56:8	examples 94:6	232:18
endurance 8:9	57:12	99:12 102:20	exist 14:10
ennis 2:24 5:15	estimate 34:12	223:13	exists 90:24
enormous	101:8	excellent 86:15	122:8
153:15 155:22	et 109:3	98:12	expect 177:22
ensure 164:17	euphemisms	exception 126:15	expected 49:13
entailed 153:17	116:3	127:14 128:3,21	expense 153:15
194:15	evasive 137:11	exceptions	153:16
entered 167:11	evening 156:8	123:21 127:15	expensive 72:25
179:18	event 236:17	199:11	experience 8:2
entering 182:16	events 85:20	exchange 111:20	25:21,24
entire 18:6 28:6	159:3	111:23 112:17	experienced
102:19	everett 197:18	114:12,14	151:23
entitled 2:10	everybody 89:24	224:21	expert 147:18,24
211:7	evett 2:18 27:16	exchanges	expires 235:25
entity 69:8 78:10	33:24,25 34:2	112:19 113:4,6	236:25
entries 95:21,22	evidence 214:4	115:10	explain 64:10
95:23 106:15	exactly 126:2	exclude 127:23	83:24 101:15
118:17,18	157:19 168:7	excuse 199:22	116:9 117:24
212:19	183:9 186:7	204:9	118:13 121:22

[explain - file]

	1	1	
121:25 160:14	58:25 104:11	89:3 92:15 94:6	120:19 121:8,19
221:8 222:10	127:18,20	94:9 95:9,10	122:18 123:3
230:14	142:19,20 147:4	96:7,14,23 97:4	124:8,17 125:3
explaining 220:8	155:2 170:3	97:12,18,22	125:12,23,24
223:22	171:7 175:19,20	129:11 148:15	126:10 127:5
explanation	180:9 186:19,20	151:1 158:4,8	129:2 130:1,10
234:4	191:7 217:10	185:12 190:24	130:13 132:2,13
express 70:2,5	227:6	207:7	133:8 135:9
187:11	fairly 80:16,23	fee 30:19,21 31:8	136:8 137:1
expressed 196:1	212:21	31:23 32:1	138:9 139:13,15
extended 69:17	fairness 170:6	53:10,14 54:17	140:9,18,20
extensive 37:6	faith 202:1	57:3 62:23 63:3	142:24 144:9,18
37:12 73:17	falls 223:16	72:10 75:14	147:5 161:5
extensively	familiar 42:15	86:23 168:23	164:19 165:23
86:25	52:19 102:4	191:10,12 193:4	168:15 171:20
extent 9:21	124:24 125:9	197:4,15 198:13	171:24 172:4,8
14:10 127:6	193:17 213:9	199:25	189:13 194:17
extra 197:15	family 56:25	feel 20:11 152:8	195:4,21 200:17
extract 108:6	famous 73:24	172:17 176:1	201:9 202:19,23
extracting 104:1	109:6	fees 53:20 72:4	205:12 207:19
107:25	far 18:10 59:13	113:14,14 190:1	208:23 210:5,11
extracts 103:18	89:13 102:14	195:11	211:2 218:10
f	111:7 125:18	felt 48:7 109:23	223:8 224:6
f 54:24	188:6,7 213:19	199:2 227:3	229:13 230:3,11
face 195:15	230:19	234:3	231:12,13,18
facsimile 2:16,22	fascinating	fetterly 2:14 3:6	233:17 234:10
fact 11:12 24:18	157:1	5:20,22 11:6	field 60:16
26:3 58:1	fashion 132:1	12:1,11 14:16,17	figure 12:13
113:16 128:20	fashioned	27:3 29:23	file 23:22 24:22
137:25 161:16	164:25	31:12 41:23	28:24 32:2,5
177:1 200:15	faster 179:12	43:2 44:1,10	52:21,24 53:18
factoring 127:3	federal 13:15	45:3 46:1 53:3	66:2,4 70:2,5,7
factual 126:2	14:2,5,22 15:2	55:7 58:10 65:4	81:8,10,19 82:4
148:5	20:3 34:18 35:8	89:9 92:3,20	82:5,6,12,12,16
fail 101:22	35:12,17 40:11	98:7,11,23	83:20 117:15
fair 8:15,16	41:6 42:11 43:5	102:13 103:10	118:6 120:5,16
16:25 17:11	43:6 61:10	103:23 110:3,20	121:5 133:23
10.23 17.11	64:22 69:20	118:7 119:3,23	134:4,9,11,11,16
	I.	l .	l

[file - first]

134:21,24,25	119:22,24 120:9	27:10 28:1,23	37:15 39:1 46:8
135:2,16 143:5,8	120:10 121:1,6	30:19,21 31:8,22	50:5 52:4 54:23
143:15,18,18,20	121:12,17,18,20	32:1 34:22 38:6	56:2 57:2 60:1
143:25 144:6,17	121:25 122:7,13	38:18,20 39:5,8	63:19 64:9
145:20,22	122:14,16 123:2	39:12,18,19	74:19 94:13
149:13 152:1	123:7,9 126:16	42:11,12,20 44:8	95:6,8 105:13
161:1 165:19	128:8 129:7,23	44:25 45:9	151:10 156:18
166:14 167:8	131:1,22,25	51:15,20 53:10	157:14,24
169:11,19	132:11 133:4,9	53:14 58:20,23	174:14 176:18
170:23 171:4	133:16,20	70:6 73:1 78:5,6	185:11,14
174:18 179:20	142:19 145:14	79:20,23 80:8,25	193:14 195:18
180:7 186:6,11	145:17 148:3,8	81:12 83:8 84:4	208:21 210:8
187:5,10,11	149:8,10 158:5,9	84:6,7,9,13,24	fill 138:24 169:6
188:2 192:3	158:14 160:24	85:7,9,11,15,21	186:8 198:10
194:2,9,9 212:6	166:16,22,24	85:24 96:10,24	fills 59:17
212:13 220:16	170:10 174:20	103:21 109:17	filtered 116:25
229:21 230:10	177:5 179:18,21	118:4,10,11	118:25
230:21 231:2	179:24 180:3,5	123:10,12,17,24	finances 211:11
232:3	181:22,23 182:2	124:7,15,16	financial 95:1
filed 20:25 21:6	186:4 191:16	126:16,22	141:14
22:22 23:16,25	205:12 209:5,10	127:18 128:6,7	find 97:17
24:15 28:11	209:21 210:22	129:16 142:22	140:20 157:1
29:7,9,13,14,16	218:22 226:2,25	143:10,12 148:9	195:8
30:6,9,12 31:3	228:23 230:1	148:10,20,24	finding 36:4
33:1 34:14,23	231:21,22 233:7	149:1 150:24	fine 9:11 16:21
35:9 36:4,15	233:15	155:9 158:2,3	17:6,14 116:16
39:23 40:1,24	filer 39:11,12	167:9 168:23	155:13 168:23
41:8,14,16,22,24	80:24 118:18	169:24 176:8,21	200:8 225:24
42:2,5,9,17,21	133:5 150:25	178:11 181:10	finish 16:18
42:23 43:13,14	151:4 167:14	181:10 184:10	93:20 98:10
43:15,16,18,25	169:5 170:22	187:16 197:11	201:5
44:5,5,9,21 45:2	180:23 212:19	197:19 198:7,13	firm 5:23 30:18
46:16,18 52:11	213:7 214:1	198:14,18	34:2 61:24 62:6
62:10 79:13	filer's 214:3	207:17 209:6	157:9
80:3,21 84:17	files 34:10,12	233:9	firms 107:17
92:19 97:21	164:18 180:23	filings 22:9,10	first 3:17 6:6
109:16,24 117:3	filing 20:17 22:5	22:23 33:5,5	11:5 13:11 58:7
117:5 119:2,7,9	22:7 23:20	34:18 35:15	66:9,15 93:22
	l	I	I.

[first - general]

104 16 100 14	6 11 (0.10 (2.2	0 1 4	6 21 22 22 15
104:16 109:14	folks 60:10 62:2	foundation	fry 21:23 22:15
110:1 131:9,12	99:1 119:10	55:10 58:12	25:19 26:1
132:10,18	126:25 223:22	103:24 110:4,13	37:18
160:11 161:3	follow 49:13	121:9 122:19	fulfillment
173:23 180:3	107:4 146:21,24	124:18 125:13	115:24 116:1
182:11 183:12	147:12	130:2,11 142:25	full 6:15 10:9
185:1,15,17	followed 20:17	144:10 164:20	13:11 15:12,14
186:6 190:15	following 46:8	165:24 194:18	16:19 17:11
191:8 194:5	58:3,4 147:11	208:24 224:7	19:7 48:8
198:5 210:24	follows 6:8	230:4	181:13 185:20
226:18 233:3	105:21 146:17	four 7:2 40:12	236:14
235:5	147:11	111:25 115:22	fully 16:24 51:22
fits 180:5	force 87:4	156:12 163:16	fulton 66:3 70:4
five 45:15 60:14	foreclose 225:16	191:2	fun 234:17
67:13 109:21	foregoing	frame 90:18	function 165:2
111:25 115:11	105:20 235:7	104:14 131:12	179:14
115:17,22	236:9,14	153:9 175:22	fundamental
129:17 174:1	forge 172:22	framework	32:20
191:2 205:19,20	forgot 214:8	131:16	funding 197:16
223:18,19,20	forgotten 75:18	francisco 2:15	further 70:21
224:1,2,12 225:9	form 14:8 174:7	75:2,18	116:14 158:1
fix 150:25 151:4	174:8,10,12	fraud 50:2	233:17,20
fixed 117:22	177:16 182:16	free 72:5,5,8	236:16
flexibility 63:10	former 85:21	113:17,23	future 113:25
87:11 88:1	formula 182:18	191:20,21,23	220:6
float 169:17	182:19	192:23 200:11	g
flooded 185:24	formulas 175:7	200:19,22 202:3	g 2:14 5:1
185:25	183:1,4	216:16	gable 214:5
floor 2:15	forth 95:24	fresno 66:22	_
florida 70:11	115:5	friday 19:19,24	games 27:16 200:4
71:5 129:15	forward 11:3,9	32:25 33:2	
139:6 141:21	11:24 12:2,6,13	34:15,25 35:7	gates 110:22
169:13	14:13,24 15:4	176:18,21 177:5	gather 92:8
focus 52:3	16:11 51:8,15	friend 114:21	gathered 104:2,7
focused 50:7	126:9 204:21	friends 156:24	gathering 95:20
focusing 89:23	found 36:14,18	front 30:25	gathers 104:3
folding 83:3	109:9	46:17 80:17	general 10:20
			13:19 50:21

[general - granicus]

52:1,12,12,14	girdner's 228:3	111:13 112:13	97:22 98:1
55:14 56:23	give 17:21 31:16	114:2 116:13	102:1 104:23
65:7 96:6	44:18 49:23	122:4 126:6,9	106:6 125:20
109:19 112:25	56:22 75:22	130:16 133:13	126:5 147:20
123:18 157:5	77:22 90:10	138:6 139:12	149:20 152:14
159:2,8 174:14	92:7 99:13	146:10,12	155:7,23 157:22
174:14 198:8	160:20 171:10	152:22 171:22	161:22 162:9
generally 132:25	171:24 173:6	172:11,14	163:10 165:21
generated 40:2	178:5 187:9	182:21 185:21	167:6 169:5
145:21 187:2	190:18 202:21	186:18 190:5	171:17 173:2
gentleman 59:5	219:2	201:14 210:13	175:17 176:22
gentleman's	given 65:13	212:18,22	178:17 189:20
204:4	86:10 204:15	goal 207:14	192:24 194:12
geography 77:25	217:23 234:3	208:3,6 209:18	199:9,16 201:7
86:8 148:19	235:13	goals 165:20	202:8,22 204:21
georgia 64:12	gives 184:22	207:22 208:14	210:11 214:7
65:22 68:1	giving 204:19	209:13	216:13 223:8
69:23 71:6	glass 227:15	goes 20:1,4 27:8	good 6:12,14
139:6 141:21	glasses 104:25	51:14 80:25	7:23 20:6 61:4
149:3 188:17,21	go 8:6,25 11:3,8	81:3 92:23	76:8 98:2
204:16 205:16	11:21,24 12:2,4	118:16,19	158:21 161:12
205:22 206:17	12:11,14,23,23	143:19,20 144:1	161:16 162:6,14
207:3 215:2	14:24 15:3	146:23 150:13	183:18 202:1
getting 34:6 90:9	16:11 19:23	168:24 171:4	215:25
113:13,14	20:24 28:22	194:6 212:17	google 182:25
163:12 168:11	30:17 31:6,8,19	230:20,23	183:1
203:23,24 210:2	31:24,25 36:22	going 8:20 10:24	googlebot 109:6
girdner 1:13 2:1	36:23 45:14	11:1,16,18,20	109:9
2:4 3:4,19,22	46:9 51:7 53:12	12:13 14:13,14	gosh 47:13
4:4 5:8,22 6:5	59:21 64:3,7,8	16:22 17:10	177:21
6:12,17 11:7	66:13,14 67:8	28:24 32:4	gotten 18:9,9
15:6 125:15,22	68:16 73:22	33:20 51:14	grab 97:17
125:24 126:11	74:4,13 83:22	59:1,2 65:11	103:20 149:20
133:15 173:4	84:14 87:8,9	66:18 67:8	171:1 216:3
228:6 229:11	94:17 97:15	68:13,14 69:19	grabbing 216:4
231:6,19 234:20	99:18 100:20	70:11 71:8,20,21	graduate 17:23
235:5,19	102:2,3,5 104:18	72:17 75:1 77:2	granicus 71:24
	105:8 108:25	86:7,8 91:22	169:22 187:13
	1	1	1

[gravelly - human]

gravelly 112:24	hand 30:20,21	hear 124:11	holidays 157:24
great 9:4 30:22	31:6,20 116:11	214:20	home 10:3
49:9 50:9 84:21	167:7 169:1	heard 50:6	190:21
97:10 98:11	236:18	126:15 137:13	homegrown
105:5 138:9	handed 168:21	159:21,22 162:7	72:24 73:6,18
156:21	handle 99:15	167:15 191:12	81:6,7,12 83:10
green 183:13,15	handled 20:25	192:7 193:8,11	84:24 93:7,7,15
184:14,17	81:14	200:1 216:25	95:5 105:16
greet 114:20,23	hands 171:7	hearing 205:6	106:4 187:19
ground 8:5	hang 83:1 85:22	heavy 84:14	honestly 185:19
11:12 16:16	85:22 135:13	heck 17:3	honolulu 86:21
98:9	happen 24:25	held 5:12 13:2	86:25
group 220:21	58:18 147:9	help 83:18 94:16	hope 125:23
guardianship	151:5 159:23	105:4 106:11	hopefully 142:15
56:5,18	186:2	164:10 183:8	hopping 149:21
guardianships	happened 100:8	218:11	host 107:17
56:16	163:16 224:19	helping 185:10	hosted 134:23,25
guess 10:19	224:22	helps 47:6 54:1	135:17 136:16
13:22 60:15	happening	hennemen 59:20	136:19,24
80:20 86:21	145:11 149:23	60:5	137:20
96:16 131:2	157:11	hennemen's	hosting 137:19
132:10 138:24	happens 156:22	59:25	hosts 137:13
162:3 165:8	234:17	heritage 83:2	hot 172:7
179:1 207:14	happy 41:2	hey 28:24 32:4	hour 2:9 8:12
212:25 229:8	83:22 144:20	167:7	138:8
233:22	187:9	hiatus 71:19	hours 35:9
guessing 114:7	hard 55:17,25	high 17:24,25	156:12,12
guide 155:18	harm 151:22	18:20 52:4	158:14 179:3,3,6
guy 112:23	152:2,10,18	higher 193:5	179:8,9,14
114:16	153:10	hire 87:24 89:20	housed 229:23
guys 172:18	harms 152:11	90:18	230:2
h	hawaii 35:13	hires 60:11	housekeeping
h 3:9 4:1 54:24	40:14 72:7	hiring 60:17	227:24
half 70:13	86:21 141:21	hit 230:22 231:4	huge 73:23 74:5
206:15	head 50:1 99:7	holding 161:11	177:21
hallmark 152:7	99:25 112:11	holiday 35:8	human 99:17
102	115:25 116:1,6	177:7	102:3 105:21
	117:21		146:17,18,22
		1	

[hung - including]

hung 168:11	123:23 124:14	210:2,21 211:16	217:3
hypothetical	126:14,22	idea 23:1 54:2	implementing
31:16 32:7	127:17 128:1,4,6	99:3 212:11,15	213:14
58:14 130:12	128:7,18,21	212:16 215:22	implication
132:14	129:22,22	identical 133:1	222:11
hypothetically	130:22 131:14	162:3 222:3	importance
91:16	131:22 132:1	identification	162:12 163:10
i	134:8,10,19	125:16	163:20
icourt 103:19	135:17 136:12	identified 11:8	important 29:8
104:9 146:4,6	136:24 137:13	47:11,20,22,23	29:15,16 34:7
147:2 181:16,20	139:16,18 140:2	55:20	57:17 86:13
idaho 1:2,8 2:8	140:8 141:21	identifies 49:17	91:3 119:13
5:11 10:18	142:8 143:6	ignored 50:13	131:20 132:9
19:11,25 20:4	144:6 145:7,12	illinois 77:18	152:7 162:13,19
25:25 26:13	146:2 152:19	139:7	162:22,25 163:2
34:19,24 35:9,17	158:11 159:14	illustrative 70:3	164:3 165:2
36:1 37:12,13,21	159:15,17 160:3	imagesoft	impression
37:23 38:5,7,17	160:6,7,8 161:2	187:17	184:22
38:18,25,25	163:3,25 166:13	immediate	inaccurate
39:21,24 40:7,25	168:13 170:2,6,8	131:21 160:24	113:19
41:3,7,10,13	170:13 171:6	162:7	inadvertent
42:9,15,19 43:1	174:6 185:1	immediately	224:25 225:4
43:10,12,24,24	187:6,7,22 188:8	121:5,17,20	inadvertently
44:7,24 45:2,9	188:20 192:10	161:4	219:20 222:8
50:19,25 51:5	195:19 201:8	impact 15:21	224:17 227:24
52:20 58:2,3	207:17 209:1,5,7	16:1 100:16	inclined 233:6
59:4,9,10 60:9	211:20 212:23	imperial 72:19	include 49:20
61:19 62:16,19	217:3,4,9,14	73:7,11 88:18	70:1 199:3
63:7,19 64:1	218:1 225:8	implement	included 26:2,14
78:16 89:3,5,7	226:22 229:11	221:20	38:9 164:17
91:14,16 97:4	229:20,23,24	implementation	174:11 189:3
100:4,17 101:1	235:22,24,24	214:11,17,24	219:7 221:10,23
101:25 102:4	236:2,6,24	215:10 218:1	223:13 227:4
106:22 107:18	idaho's 13:16	implemented	includes 13:12
109:8,15 111:5	22:6 43:22	60:20 71:13	18:23 35:16
118:3 121:4	102:1 103:18,18	86:16 87:13	62:16 90:5,13
122:12 123:15	104:8 170:4,11	90:6,14 91:11	including 13:20
122.12 123.13	194:16 195:2	92:1 215:17	88:6 96:23
	1	1	1

[including - issue]

111:17 128:4	101:21 102:3	190:19 199:17	interrogatories
157:24 164:7,22	104:2,4,8,9	institution 61:23	3:17 104:16
217:9,25 218:24	107:6 108:1,6,12	62:7 164:10,11	interrogatory
inclusive 235:9	112:3 139:22	institutions	105:9
income 113:13	140:21 159:6	61:18 62:4	interrupted
incomplete	165:21 186:7,8	160:1,7	169:21
130:11 132:14	191:17 216:3,6	instruct 125:21	interrupting
incredible 186:3	informative	172:4	21:17 199:22
incur 60:18	198:8	instructed 9:1	intervening
214:23	informed 200:15	instructions	177:6
independent	initial 54:22 58:5	101:19	introduction
19:3,5 21:10	113:17,23	intact 165:9	208:13
63:24 91:5	115:20	intake 37:8	introductory
index 109:10	initiate 58:6	integrate 194:4	113:1
159:12	initiated 57:6	integrity 163:19	investigated
indicate 17:12	63:13,18 226:22	163:25 164:4,6	135:22
184:9	initiates 119:20	intend 225:12	investigation
indicated 22:13	119:22 120:3	intended 182:5	51:25 116:17
107:9 115:12	initiating 195:20	intention 15:14	investigations
indictment	injunction 3:20	interest 9:22	51:24
51:15 52:1	4:5 69:15,16	50:10 156:22	investment
indictments	173:11 218:22	157:6 169:25	155:22,25
50:17 51:2,6,7	226:7,11 228:18	236:16	involved 44:15
51:20	injury 55:3	interested 56:3	84:17 111:10
individual 50:24	input 226:24	56:24 58:15	115:9 137:4,16
52:3 61:12 62:1	insinuate 202:5	interesting 157:5	218:8
82:13 83:23	insisted 115:15	157:17 160:20	involves 39:24
94:18 99:12	116:7	169:12 183:23	involving 54:6
159:25 160:7	inspiration 50:8	interface 169:5	iowa 77:18
216:1	157:12	180:22 217:13	185:22
individuals 52:4	install 67:12	interfaces 116:4	island 185:23
info 216:4	instance 32:11	internal 157:21	issue 11:4 44:14
information	50:5 84:16 89:2	internet 61:14	44:15 52:9,25
48:7 71:2 92:9	96:14 104:8	156:10	55:6,21 57:7
92:14 94:15,20	151:7 181:19	interpret 126:25	63:22 79:6
95:7,14,16,20	199:18	interpretation	110:2,7 118:21
96:16,23 97:17	instances 149:6	13:16 125:17	125:25 126:23
97:21 100:7	150:24 151:3		127:3,18 160:12

[issue - know]

160:12 169:13	jody 182:24	229:12	keep 9:6 71:8
183:16 234:6	joint 56:17	julie 35:19	75:1 89:15
issued 52:9	joking 172:6	july 226:23	160:1 162:14
232:14	jon 5:22 10:20	jumble 65:25	163:5,6,7 165:7
issues 90:1 103:8	46:1 111:8	jump 38:2	208:5,6
126:1	139:12	218:10	keeping 18:22
item 180:21	jon.fetterly 2:17	jumping 72:7	47:4 159:22
items 48:9 54:6	jonathan 2:14	jumpy 234:15	keith 198:4
165:17 174:11	journal 72:21	jurisdiction	kept 135:20
j	73:24 74:6 75:7	88:11 90:5,14	136:17
j 59:12	75:10 156:19	174:3 193:8	kern 66:21 206:3
jamie 59:19	journalism 18:8	jurisdictions 7:7	kidding 172:3
janquart 20:20	18:11	43:9 60:20 61:7	kind 19:4 31:15
21:5,12,24 22:12	journalist 18:5	77:21 86:2,15,18	52:17 61:15
22:17 23:2 24:9	journalists 79:7	86:19 87:3,17	73:18 74:18
24:14 25:13	167:21	89:21 91:10,12	76:16 102:15
26:8,13 59:5,7	judge 11:22	142:1	115:22 122:3
59:12	68:25 80:14,18	justification	159:1 176:15
janquart's 23:19	89:3 119:11,13	185:5 196:3,9	177:24 179:15
25:12	122:4 158:18	justifications	234:12
january 46:21	168:2 178:6,15	185:7,16	king 76:12,14,18
jcoit 112:1,2	178:16 183:11	justified 155:12	199:13
jimmy 94:25,25	184:6 192:14	180:1	kings 67:15
95:3 138:20	193:15 200:10	justify 131:5	kiosk 64:2,4,18
141:11,13	201:4,16,25	132:21 185:8	kiosks 20:2
142:11 173:22	202:6,11 203:9	k	kl 110:22
175:8 182:19	203:14 205:6	kahuna 74:4	knew 200:6
job 9:4 18:14	207:24 208:9	kansas 139:7	know 7:15,18
19:18 28:16,16	209:22 214:5	141:22	8:1,5,12,18,24
28:19 87:22	233:24	katherine 3:24	12:8 17:5 18:12
88:14,21 89:6,16	judge's 11:23	223:5	22:1,19 23:6,19
91:15,17 162:19	judges 208:1	keating 3:24	25:8,18 27:17
162:22,25 163:3	judging 178:3	223:5 224:21	30:14 33:16
jobs 162:17	judgment 56:13	ked 2:22	34:16 35:15
165:2,12,16	57:6	keely 2:19 5:24	36:11 38:20
166:5	judicial 112:3	110:24 171:20	42:22 43:15
	163:20,25	172:14	49:9 50:21,22,25
	164:14 198:17		52:5 55:12,17,23
	1	1	

[know - left]

56:20 58:14,21	165:21 169:9,12	1	111:6,14 119:22
59:4,13 61:1,13	169:17 170:4,8		120:3 129:8
64:13 65:15	170:11,13,15,17	1 1:13 2:1,4 3:4	160:23,25
75:12 76:23,24	171:6,12 172:6	6:5,17 71:1	210:25 211:25
79:12,14 80:20	175:8 178:4	235:5,19 la 74:4	218:21 226:1,2
80:22,22 81:7,9	181:6 182:8		226:22
81:17 83:20	183:6 184:5,7	labor 61:5 215:5	lawsuits 65:2,7
84:12 85:19	185:3,18 186:1,4	lack 110:12	65:10,15 77:20
90:9 91:13	186:7,13 188:1,7	234:4,4	lawyer 47:6,12
93:12,12,13 94:7	188:7,25 189:3	lacks 55:10	112:20 115:7
94:7,21 99:24	190:12 191:24	58:12 103:24	174:20 181:10
100:3 101:10,11	192:4,9,14,20	110:3 121:9	181:22 207:3
101:24 102:12	194:10,15,19,20	122:19 124:18	218:7 222:24
102:17 103:3,4,7	194:25 200:8,9	125:13 130:2,11 142:25 144:10	lawyers 50:8
103:15 106:21	200:12,13		79:7,10 111:8
106:25 108:24	206:22 210:12	164:20 165:24	156:19,20 157:6
109:19 110:8,24	211:15 212:15	194:18 208:24	178:20 197:15
111:8,11 113:15	212:24 213:19	224:6 230:4 land 99:13	222:18
114:22 115:4,14	215:1 216:10,11	landed 200:3	lay 99:13
116:3 123:21,23	216:13,23 218:4	language 182:23	layoffs 87:4
124:1,2,20 125:8	218:6 224:24	183:3 214:5	lays 49:25
126:24 127:1,13	230:16 235:10	lapd 18:10	lead 176:1
127:21,22 131:8	knowing 192:13	large 83:5	league 220:2,16
134:18 135:2,6	219:14	137:19 201:20	learn 141:18
135:13,18,19	knowledge 21:10	las 66:10 194:22	190:15 191:1
136:17,18,22	21:11 22:8,13	late 33:4,5,13	learned 161:14
137:10,11,12,15	37:6,12,24 48:7	35:11,15 156:7	189:23 191:8,22
137:21,23 138:3	126:21 136:10	156:13	191:25 193:3,9
138:4 140:21	150:16 197:3	law 5:23 18:3,4	200:14
142:6 144:5	200:14	30:17 34:1	learning 199:15
146:8,14 147:7,8	known 183:5	56:10,25 61:24	leave 59:17
147:15 151:17	208:1	61:24 107:17	147:20 169:2
152:13 153:9,11	knows 20:20	125:18 156:25	leaving 69:20
157:21,23	kootenai 59:22	lawsuit 38:12,16	72:3
158:12 159:14	kootenai's 60:1	38:21 53:1 54:5	led 148:4 199:4
159:17 160:9,19		55:6,22 58:8	199:5
162:3 163:9,11		66:12 76:14	left 75:16 88:20
164:1,2 165:16		97:21 110:18	88:22
	1	1	1

[legal - lunchtime]

legal 41:25 44:11	lines 65:12	litmus 155:17	looked 38:1,8,11
44:15 45:4	213:16	little 17:13	38:22 39:2,6
58:11 119:4,25	lips 124:12	104:23 105:2	46:10 70:19
121:9 124:18	list 52:21,24	113:21 117:16	123:25 127:10
125:13,25 126:1	55:23 57:2	136:15 154:6	128:5,9 157:16
132:15 133:12	59:22 68:7 78:7	157:25 162:5	167:3 168:20
223:3 229:14	86:10 94:4 95:4	163:12,15	212:23
legislative 82:24	95:25 106:7	165:15 168:11	looking 30:13
leighton 2:14	138:21 139:1,5	184:8 185:23	32:14 34:5 53:6
5:23	140:2,13 159:8,9		55:16 96:15
length 152:17	159:17,22 160:1	lives 163:15	102:15,19,23
letter 24:10	187:10 213:8,9	living 17:15	116:18 142:2
25:20 219:3,8	213:10 218:6	local 63:7,9,20	157:13 222:4
220:11 221:3,6,8	listed 54:23	82:25 88:15,20	looks 20:2 96:22
221:11 222:4,21	146:24 188:21	89:21,25 90:1,1	loop 142:15
223:4	listen 156:8	137:20	los 74:12
letters 3:21	listened 32:23	locally 64:17	lose 208:3
54:10 162:11	listening 37:18	90:23	losing 7:12
220:14,18	listing 57:1	log 146:4	lot 7:22 50:12
221:13 224:2,11	lists 54:25	long 8:10 14:13	51:14 53:6
224:12	literature 18:2	17:19 73:17	66:18 77:16,18
letting 44:12	litigating 78:15	100:13 101:1	78:2,5 85:25
level 79:1 80:14	litigation 18:23	114:19 129:13	92:24 99:14
102:16	47:4 50:7 52:13	130:21 141:16	157:2,17,18
lewis 18:3	52:15 55:14	195:25 225:21	187:10 196:6
liberal 44:12	56:23 66:7 67:3	longer 140:17	219:18
lien 56:11	68:22,23,25 69:2	155:24 174:1	lots 115:4
light 183:14	69:10,11 71:4,5	look 24:14 31:21	louis 35:19
lightly 153:19	71:14,15,25	33:2 54:11	louisiana 141:22
liked 89:15	72:12,13 73:8,17	55:19 87:9	luis 66:25
limit 64:20	74:8 75:5 76:2,3	97:21 99:2	lunch 94:21 98:5
limited 62:19	76:5,11 78:23	102:3 142:3	98:10 100:1
64:1 69:7,16	84:16 85:7,16	153:16 154:12	102:15,18
106:13,13 170:5	86:1,3,5,17 87:6	156:5,7 168:6	103:14 107:5
209:1	87:10,15 155:23	174:17 176:11	108:15 138:7,12
line 11:23 28:23	158:15 191:3	177:25 219:4	138:17,19
182:15	207:15 208:10	225:19	lunchtime 99:5
	211:20	-	103:12

[lying - meets]

lying 201:25	manager 66:4	massachusetts	meaning 38:12
m	95:1 134:10,11	141:22	73:25 81:12
m 3:2	135:1 141:15	mateo 67:1,6,7	88:13 93:9
ma'am 226:9	143:20 192:4	85:7	178:1 181:15
magic 131:16,18	230:21	materiality	215:25 233:15
152:21 183:3	managers 66:2	13:25 14:8	means 18:17
magistrate 56:1	70:7	math 139:13	47:8 117:7
57:9 58:2,15	manages 134:16	matter 2:10 5:9	120:5 121:5,16
maintain 165:2	135:2,6 136:11	179:7 227:23	122:12 133:24
	136:14	mean 10:4,5	134:4 142:18
maintaining 164:23	managing 60:17	15:8 17:1 21:9	143:11 144:25
major 18:22	manhattan	30:6,8,10,11	159:4 164:1
50:3 107:17	69:16	31:3 36:7,8	176:7,8 180:13
majority 30:22	manual 48:16,19	37:22 38:15	181:17,18
83:5	49:14,17,25	39:2 40:22	183:16,20,22,24
making 18:17	212:22	41:16,20 42:4	184:1 186:5
180:12 195:14	mark 12:17	43:16 49:20,25	231:22
207:10 221:14	48:12 54:19	53:8 59:1 61:23	meant 12:7
malpractice 55:3	220:22 224:20	69:4 78:21	29:14 117:24
man's 182:24	228:3,12 229:5	83:15,15 86:3	170:6 174:13
management	232:17	87:7 95:16	measure 156:4,5
24:22 73:1 81:9	marked 12:22	101:17 102:25	177:25
81:13,22,22 82:6	48:14 54:21	107:1 115:3	measuring 178:8
82:13,15,21 83:2	104:21 153:22	116:10,20 117:5	178:22
83:6 133:21	154:1 220:23	117:19 121:25	media 70:14
135:3,7 136:11	225:1 226:15,19	124:1 132:23	72:2 74:7
136:21,23 137:4	227:25 228:14	133:3,5 134:2	107:11 159:9,12
137:17,18,25	229:4 232:18	136:6 149:9	160:2
143:16,23 144:3	marshall 24:12	154:21 155:22	medical 15:21
145:1 149:16	24:13 26:7	156:19 166:5	15:25 55:2
150:4 164:23	48:20 60:12	174:13 178:15	medications
165:3,19 166:15	maryland 78:25	179:22 180:4	15:20 16:1
166:23 167:2,12	81:15,18 141:20	188:20 189:5	meet 114:20,23
171:5 194:6	141:23	190:3,12 196:6	meeting 112:1
212:14 213:3	maryland's	199:5 209:23	115:12,20
229:24 230:2,8	81:16	213:23 215:13	meetings 157:21
230:24 231:3	mash 68:1	221:23 233:8,9	meets 179:16
250.27 251.5			

[mem - n]

mem 2:23	middle 70:18	misstates 27:4	monitoring
member 70:20	76:17 77:19	44:1 120:19	149:25
87:19 159:12	mill 157:2	124:8 125:3,12	montana 20:4
163:21	million 73:23	140:9 200:17	34:20 35:17
members 79:8	74:4	201:9 224:7	62:17 77:18
159:9,18	mimic 101:19	mistake 214:1	91:1 139:7
memo 203:18	mind 45:12	224:24	187:15 188:5
205:2	60:24 86:7	mistakes 214:4	monterey 66:24
memorandum	91:13 104:24	mitchell 2:19	206:3
4:6	113:24 133:16	5:24	months 20:23
memorized	158:20 175:17	mix 65:24	67:13 191:2,4,6
124:2 127:10	196:9 206:1	148:18	mop 35:14,18
128:11	mindful 218:11	mixed 78:6	36:3
memory 26:18	minneapolis	model 61:9	morning 6:12
26:19 199:19	223:19	173:25 174:2	12:18 13:8 59:5
mention 113:16	minnesota 77:17	modern 156:10	156:7
196:19	139:7 220:15	modification	mornings 234:12
mentioned 69:24	223:14,15	229:7	motion 3:20 4:5
74:14 85:4 97:1	minney 111:20	modified 10:22	103:2,13
111:8 114:16	113:5,7 114:8,14	73:4	mountain 12:19
148:23 186:25	218:24	modify 65:14,14	13:8
191:12 199:12	minor 49:12	151:9	move 12:6 64:21
199:16,23	minuscule 214:6	molly 2:19 5:24	89:19 94:9
206:16	minute 45:15	moment 154:8	142:16 143:23
menu 180:24	75:22 171:22,24	160:20 171:11	221:2
181:1	210:14	173:6 219:2	moves 230:17
merced 67:13	minutes 103:12	231:19 232:10	moving 22:5
merely 10:13	129:14,17,24	monday 19:18	71:21 74:13
message 100:9	mish 68:1	19:24 176:24	multiple 186:14
mexico 78:18	misrepresenting	177:2,6,7	musings 157:22
82:2 117:20	101:5 201:22	money 11:17,25	158:18
188:19,20 193:3	missed 89:13	90:20 113:9	myriad 162:2,2
197:1 202:5	missing 31:21	152:5 169:10,14	mysterious
203:15 204:2	missouri 78:18	169:15,23 170:9	117:17
215:2	80:7 141:23	170:12 171:2,7	n
miami 129:15	misstate 120:21	212:20	n 3:1,2,2 5:1
michigan 141:22	124:10	monitor 105:13 158:17	59:12 204:5
		-	

[name - november]

182:24 198:3,5 171:21,22 151:10 154:20 156:6 168:22,23 171:21,22 154:23 167:21 136:32:25 136:17 202:16 177:20 188:18 113:4,7,15 114:8 235:7 236:8,12 needed 16:25 197:1 202:5 114:14 218:23 nime 34:6 224:3 203:15 204:2 nime 77:2 205:16 nimth 40:13 nation 43:5,6,20 136:1 202:21 national 126:13 216:3 231:3 negative 108:25 127:25 128:15 negotiating 127:25 128:15 negotiating 190:9 187:24 negotiating 123:19 network 129:14 140:23 188:21 169:7 174:18 204:17 network 12:14 66:5 83:19 198:24 nearly 72:5 126:15 159:22 126:15 13:18 221:14 network 12:14 nearly 72:5 126:15 159:22 necessarily 148:22 175:25 172:15 201:25 necessarily 18:19:8 new 22:20,21 156:16 nimth 40:13 non 52:3 68:4 normally 55:15 normall	name 6:15 19:13	161:12 166:6	117:2,14,20	night 7:22 34:25
182:24 198:3,5 171:21,22 154:23 167:21 nights 32:25 204:4 186:17 202:16 177:20 188:18 nina 111:20 named 67:16 212:1 224:8,10 188:20 193:2 113:4,7,15 114:8 235:7 236:8,12 needed 16:25 203:15 204:2 nine 77:2 205:16 names 34:6 103:21 206:1 needs 14:1 131:5 208:12,22 210:2 ninth 40:13 napa 206:3 131:6 132:10 210:8 212:12 ninth 40:13 nation 43:5,6,20 146:18 155:12 215:1 non 52:3 68:4 179:3 negotial 23:16 24:15 non 52:3 68:4 127:25 128:15 negative 108:25 negotiate 190:9 41:8,14,16 80:2 norfolk 79:21 187:24 negotiation 131:22,25 188:25 190:14 132:11 160:24 north 74:13 123:19 nevada 139:8 news 1:4 3:12,14 75:17 139:7 180:18,21 181:9 nevada 139:8 news 1:4 3:12,14 197:19 198:24 29:1,2,3 32:8 32:25 35:6 37:2 23:22 35:6 37:5 23:22,24 199:214 66:5 83:19 50:8 60:15 72:1				•
204:4 186:17 202:16 177:20 188:18 nina 111:20 named 67:16 212:1 224:8,10 188:20 193:2 113:4,7,15 114:8 235:7 236:8,12 needed 16:25 197:1 202:5 114:14 218:23 names 34:6 224:3 203:15 204:2 ninth 40:13 napa 206:3 131:6 132:10 208:12,22 210:2 ninth 40:13 nation 43:5,6,20 146:18 155:12 215:1 non 52:3 68:4 126:19 127:13 180:1 202:21 newly 20:25 21:6 non practicing 126:19 127:13 negotiate 190:9 41:8,14,16 80:2 normally 79:21 127:25 128:15 negotiating 90:7,16 97:21 normally 55:15 75:15 107:2 187:24 negotiation 131:22,25 183:25 184:7,14 19:10 178:12 180:20 180:18,21 181:9 141:23 188:21 209:10 210:22 19:17 139:7 197:19 180:18,21 181:9 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 198:24 29:1,2,3 32:8 20:22 35:6 37:5	·	· · · · · · · · · · · · · · · · · · ·		
named 67:16 212:1 224:8,10 188:20 193:2 113:4,7,15 114:8 235:7 236:8,12 needed 16:25 197:1 202:5 114:14 218:23 names 34:6 224:3 203:15 204:2 nine 77:2 205:16 napa 206:3 131:6 132:10 210:8 212:12 non 52:3 68:4 nation 43:5,6,20 146:18 155:12 215:1 non 52:3 68:4 74:6 107:18 180:1 202:21 newly 20:25 21:6 non 52:3 68:4 national 126:13 126:19 127:13 negative 108:25 negwly 20:25 21:6 nonpracticing nationally 126:19 127:13 negotiating 90:7,16 97:21 norfolk 79:21 nationally 192:2 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 208:10 209:7,16 97:21 178:12 180:20 nature 96:5,11 nevada 139:8 141:23 188:21 3:19 4:5 5:9,21 north 74:13 169:7 174:18 204:17	· ·	· ·		0
235:7 236:8,12 needed 16:25 197:1 202:5 114:14 218:23 names 34:6 103:21 206:1 needs 14:1 131:5 203:15 204:2 nime 77:2 205:16 nation 43:5,6,20 146:18 155:12 210:8 212:12 non 52:3 68:4 nation 43:5,6,20 146:18 155:12 215:1 non 52:3 68:4 national 126:19 127:13 180:1 202:21 newly 20:25 21:6 normally 127:25 128:15 negotiate 190:9 negotiating 90:7,16 97:21 normally 75:15 187:24 negotiating 192:2 129:7,23 131:1 178:12 180:20 183:25 184:7,14 nationwide 85:25 190:14 208:10 209:10 210:22 183:25 184:7,14 196:24 158:15 141:23 188:21 141:23 188:21 news 1:4:21 17:17 19:19 nature 96:5,11 neval 39:9 35:6 37:20 20:22 32:17,18 23:22,24 198:24 29:1,2,3 32:8 20:217 18:18,19,23 20:22 32:17,18 23:22 24:26:6,23				
names 34:6 224:3 203:15 204:2 nine 77:2 205:16 napa 206:3 131:6 132:10 210:8 212:12 208:12,22 210:2 ninth 40:13 nation 43:5,6,20 146:18 155:12 215:1 179:3 rational 126:13 216:3 231:3 newly 20:25 21:6 nonpracticing national 127:25 128:15 negative 108:25 newly 20:25 21:6 nonpracticing 127:25 128:15 negotiate 190:9 negotiating 90:7,16 97:21 norfolk 79:21 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 209:10 210:22 183:25 184:7,14 196:24 158:15 141:23 188:21 3:19 4:5 5:9,21 10s 3:22,24 198:24 never 12:9,16 18:18,19,23 nos 3:22,24 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 <td></td> <td>1</td> <td></td> <td></td>		1		
103:21 206:1 needs 14:1 131:5 208:12,22 210:2 ninth 40:13 napa 206:3 nation 43:5,6,20 146:18 155:12 210:8 212:12 non 52:3 68:4 74:6 107:18 180:1 202:21 newly 20:25 21:6 non 52:3 68:4 national 126:13 126:19 127:13 negative 108:25 newly 20:25 21:6 nonpracticing 127:25 128:15 negotiate 190:9 41:8,14,16 80:2 norfolk 79:21 187:24 negotiating 192:2 129:7,23 131:1 178:12 180:20 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 208:10 209:10 210:22 197:17 139:7 169:7 174:18 141:23 188:21 14:21 17:17 nos 3:22,24 198:24 never 12:9,16 29:1,2,3 32:8 20:22 32:17,18 23:25 35:6 37:5 notary 2:7 198:24 never 12:9,16 29:1,2,3 32:8 20:22 32:17,18 23:22 234:7 nearly 72:5 126:15 159:22 86:25 89:11,22 229:7 234:9 necessarily 159:24 161:7 159:24 161:7 155:13,18,20,21	· ·			
napa 206:3 131:6 132:10 210:8 212:12 non 52:3 68:4 nation 43:5,6,20 146:18 155:12 215:1 non 52:3 68:4 74:6 107:18 180:1 202:21 newly 20:25 21:6 nonpracticing national 126:19 127:13 negative 108:25 39:25 40:24 norfolk 79:21 148:3,7 188:7 negotiate 190:9 41:8,14,16 80:2 normally 55:15 148:3,7 188:7 negotiating 90:7,16 97:21 58:15 107:2 178:12 180:20 187:24 negotiation 85:25 190:14 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 208:10 209:10 210:22 75:17 139:7 196:24 158:15 141:23 188:21 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 198:24 29:1,2,3 32:8 20:22 32:17,18 nos 3:22,24 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 23:22 34:7 148:22 175:25 172:15 201:25				
nation 43:5,6,20 146:18 155:12 215:1 179:3 74:6 107:18 180:1 202:21 newly 20:25 21:6 nonpracticing national 126:13 216:3 231:3 23:16 24:15 47:12 127:25 128:15 negotiate 190:9 41:8,14,16 80:2 norfolk 79:21 148:3,7 188:7 negotiating 90:7,16 97:21 58:15 107:2 nationally 192:2 129:7,23 131:1 178:12 180:20 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 209:10 210:22 75:17 139:7 nature 96:5,11 nevada 139:8 news 1:4 3:12,14 north 75:17 139:7 198:24 29:1,2,3 32:8 20:22 32:17,18 36:11 218:12 197:19 197:19 198:24 129:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 noter 12:15 13:18 23:22 23:17,18 235:24 236:6,23 note 12:15 13:18 23:22 234:7 note 12:15 13:18 23:22 23:4:7 note 12:15 13:18 23:22 23:4:				
74:6 107:18 180:1 202:21 newly 20:25 21:6 nonpracticing national 126:13 216:3 231:3 negative 108:25 39:25 40:24 norfolk 79:21 127:25 128:15 negotiate 190:9 41:8,14,16 80:2 normally 55:15 148:3,7 188:7 negotiating 90:7,16 97:21 58:15 107:2 nationally 192:2 129:7,23 131:1 178:12 180:20 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 nevada 139:8 news 1:4 3:12,14 north 74:13 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 never 12:9,16 18:18,19,23 notary 20:21 notary 2:7 198:24 29:1,2,3 32:8 32:25 35:6 37:5 32:25 35:6 37:5 235:24 236:6,23 note 12:15 13:18 221:14 66:5 83:19 159:24 161:7 159:	_			
national 126:13 216:3 231:3 23:16 24:15 47:12 126:19 127:13 negative 108:25 39:25 40:24 norfolk 79:21 127:25 128:15 negotiate 190:9 41:8,14,16 80:2 normally 55:15 148:3,7 188:7 negotiating 90:7,16 97:21 58:15 107:2 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 nevada 139:8 news 1:4 3:12,14 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 notary 2:7 198:24 29:1,2,3 32:8 32:25 35:6 37:5 235:24 236:6,23 note 12:15 13:18 221:14 66:5 83:19 126:15 159:22 86:25 89:11,22 233:22 234:7 note 223:22 234:7 noted 12:15 13:18				
126:19 127:13 negative 108:25 39:25 40:24 norfolk 79:21 127:25 128:15 negotiate 190:9 41:8,14,16 80:2 normally 55:15 148:3,7 188:7 negotiating 90:7,16 97:21 58:15 107:2 nationally 192:2 129:7,23 131:1 178:12 180:20 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 208:10 209:10 210:22 75:17 139:7 nature 96:5,11 nevada 139:8 news 1:4 3:12,14 197:19 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 14:21 17:17 96:11 218:12 180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 necessarily 159:24 161:7 105:13,18,20,21 <td< td=""><td></td><td></td><td> </td><td></td></td<>				
127:25 128:15 negotiate 190:9 41:8,14,16 80:2 normally 55:15 148:3,7 188:7 negotiating 90:7,16 97:21 58:15 107:2 nationally 192:2 129:7,23 131:1 178:12 180:20 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 208:10 209:10 210:22 75:17 139:7 nature 96:5,11 nevada 139:8 news 1:4 3:12,14 197:19 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 154:22				
148:3,7 188:7 negotiating 90:7,16 97:21 58:15 107:2 nationally 192:2 129:7,23 131:1 178:12 180:20 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 208:10 209:10 210:22 75:17 139:7 nature 96:5,11 nevada 139:8 news 1:4 3:12,14 197:19 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 14:21 17:17 96:11 218:12 180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 necessarily 159:24 161:7 15:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 154:22 156:2,5,8 174:20 182:				
nationally 192:2 129:7,23 131:1 178:12 180:20 187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 208:10 209:10 210:22 75:17 139:7 nature 96:5,11 nevada 139:8 news 1:4 3:12,14 197:19 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 18:18,19,23 nos 3:22,24 180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 noted 14:21 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 noted 14:21 16:8 13:13 14:6 new 22:20,21 156:11,13 notice 3:12,13			' '	_
187:24 negotiation 131:22,25 183:25 184:7,14 nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 newada 139:8 news 1:4 3:12,14 75:17 139:7 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 197:19 169:7 174:18 204:17 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 154:22 156:2,5,8 174:20 182:4 need 8:11 9:8 new 22:20,21 156:11,13 notice 3:12,13 10:8 13:13 14:6 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 19:15 155:4	·		· · · · · · · · · · · · · · · · · · ·	
nationwide 85:25 190:14 132:11 160:24 north 74:13 123:19 208:10 209:10 210:22 75:17 139:7 nature 96:5,11 nevada 139:8 1:4 3:12,14 197:19 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 14:21 17:17 96:11 218:12 180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 notery 2:7 198:24 29:1,2,3 32:8 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 note 12:15 13:18 233:22 234:7 noted 14:21 233:22 234:7 noted 14:21 229:7 234:9 noted 14:21 229:7 234:9 notes 136:3 174:20 182:4 notes 136:3 174:20 182:4 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 47:1,11,24 48:10 48:13 219:4 48:13 219:4 229:4 48:13 219:4 48:13 219:4 2	_		· · · · · · · · · · · · · · · · · · ·	
123:19 208:10 209:10 210:22 75:17 139:7 nature 96:5,11 nevada 139:8 news 1:4 3:12,14 197:19 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 14:21 17:17 96:11 218:12 180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 note 12:15 13:18 221:14 66:5 83:19 86:25 89:11,22 noted 14:21 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:41,18 157:13 220:17 36:25 46:7,11				· ·
nature 96:5,11 nevada 139:8 news 1:4 3:12,14 197:19 96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 14:21 17:17 96:11 218:12 180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 notery 2:7 198:24 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 233:22 234:7 near 41:11 66:5 83:19 50:8 60:15 72:1 233:22 234:7 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 229:4 63:7,20 64:7,8 84:16 89:23				
96:24 158:15 141:23 188:21 3:19 4:5 5:9,21 nos 3:22,24 169:7 174:18 204:17 14:21 17:17 96:11 218:12 180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 nearly 72:5 126:15 159:22 86:25 89:11,22 noted 14:21 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 154:22 156:2,5,8 174:20 182:4 need 8:11 9:8 new 22:20,21 156:11,13 notice 3:12,13 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 19:15 155:4 noticed 157:4 14:21 november 1:14				
169:7 174:18204:1714:21 17:1796:11 218:12180:18,21 181:9never 12:9,1618:18,19,23notary 2:7198:2429:1,2,3 32:820:22 32:17,18235:24 236:6,23near 41:1134:9 35:6 37:2032:25 35:6 37:5note 12:15 13:18221:1466:5 83:1950:8 60:15 72:1233:22 234:7nearly 72:5126:15 159:2286:25 89:11,22noted 14:21necessarily159:24 161:7105:13,18,20,21229:7 234:9148:22 175:25172:15 201:25152:10 154:19notes 136:3necessary 48:8202:7154:22 156:2,5,8174:20 182:4need 8:11 9:8new 22:20,21156:11,13notice 3:12,1310:8 13:13 14:637:8 41:4,18157:13 220:1736:25 46:7,1115:11 17:1269:3,16 78:17,21228:18 23:247:1,11,24 48:1033:8,10 40:1782:2 83:14,15233:1448:13 219:463:7,20 64:7,884:16 89:23news's 14:25229:489:16 142:392:18 93:5,2219:15 155:4noticed 157:4146:22 150:2594:3,12 95:6,7newspapernovember 1:14	1			
180:18,21 181:9 never 12:9,16 18:18,19,23 notary 2:7 198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 nearly 72:5 126:15 159:22 86:25 89:11,22 noted 14:21 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 154:22 156:2,5,8 174:20 182:4 need 8:11 9:8 new 22:20,21 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14			· · · · · · · · · · · · · · · · · · ·	
198:24 29:1,2,3 32:8 20:22 32:17,18 235:24 236:6,23 near 41:11 34:9 35:6 37:20 32:25 35:6 37:5 note 12:15 13:18 221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 nearly 72:5 126:15 159:22 86:25 89:11,22 noted 14:21 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 154:22 156:2,5,8 174:20 182:4 need 8:11 9:8 new 22:20,21 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14				
near41:1134:9 35:6 37:2032:25 35:6 37:5note12:15 13:18221:1466:5 83:1950:8 60:15 72:1233:22 234:7nearly72:5126:15 159:2286:25 89:11,22noted14:21necessarily159:24 161:7105:13,18,20,21229:7 234:9148:22 175:25172:15 201:25152:10 154:19notes136:3necessary48:8202:7154:22 156:2,5,8174:20 182:4need8:11 9:8new22:20,21156:11,13notice3:12,1310:8 13:13 14:637:8 41:4,18157:13 220:1736:25 46:7,1115:11 17:1269:3,16 78:17,21228:18 232:247:1,11,24 48:1033:8,10 40:1782:2 83:14,15233:1448:13 219:463:7,20 64:7,884:16 89:23news's14:2589:16 142:392:18 93:5,2219:15 155:4noticed157:4146:22 150:2594:3,12 95:6,7newspapernovember1:14	· ·			_
221:14 66:5 83:19 50:8 60:15 72:1 233:22 234:7 nearly 72:5 126:15 159:22 86:25 89:11,22 noted 14:21 necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 need 8:11 9:8 202:7 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14		1	1	· ·
nearly72:5126:15 159:2286:25 89:11,22noted14:21necessarily159:24 161:7105:13,18,20,21229:7 234:9148:22 175:25172:15 201:25152:10 154:19notes136:3necessary48:8202:7154:22 156:2,5,8174:20 182:4need8:11 9:8new22:20,21156:11,13notice3:12,1310:8 13:13 14:637:8 41:4,18157:13 220:1736:25 46:7,1115:11 17:1269:3,16 78:17,21228:18 232:247:1,11,24 48:1033:8,10 40:1782:2 83:14,15233:1448:13 219:463:7,20 64:7,884:16 89:23news's14:25229:489:16 142:392:18 93:5,2219:15 155:4noticed157:4146:22 150:2594:3,12 95:6,7newspapernovember1:14				
necessarily 159:24 161:7 105:13,18,20,21 229:7 234:9 148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 154:22 156:2,5,8 174:20 182:4 need 8:11 9:8 new 22:20,21 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14				
148:22 175:25 172:15 201:25 152:10 154:19 notes 136:3 necessary 48:8 202:7 154:22 156:2,5,8 174:20 182:4 need 8:11 9:8 new 22:20,21 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14	nearly 72:5	126:15 159:22	86:25 89:11,22	noted 14:21
necessary48:8202:7154:22 156:2,5,8174:20 182:4need8:11 9:8new22:20,21156:11,13notice3:12,1310:8 13:13 14:637:8 41:4,18157:13 220:1736:25 46:7,1115:11 17:1269:3,16 78:17,21228:18 232:247:1,11,24 48:1033:8,10 40:1782:2 83:14,15233:1448:13 219:463:7,20 64:7,884:16 89:23news's 14:25229:489:16 142:392:18 93:5,2219:15 155:4noticed 157:4146:22 150:2594:3,12 95:6,7newspapernovember 1:14	_			229:7 234:9
need 8:11 9:8 new 22:20,21 156:11,13 notice 3:12,13 10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14	148:22 175:25	172:15 201:25	152:10 154:19	notes 136:3
10:8 13:13 14:6 37:8 41:4,18 157:13 220:17 36:25 46:7,11 15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14	necessary 48:8	202:7	154:22 156:2,5,8	174:20 182:4
15:11 17:12 69:3,16 78:17,21 228:18 232:2 47:1,11,24 48:10 33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14	need 8:11 9:8	new 22:20,21	156:11,13	notice 3:12,13
33:8,10 40:17 82:2 83:14,15 233:14 48:13 219:4 63:7,20 64:7,8 84:16 89:23 news's 14:25 229:4 89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14	10:8 13:13 14:6	37:8 41:4,18	157:13 220:17	36:25 46:7,11
63:7,20 64:7,8 89:16 142:3 146:22 150:25 84:16 89:23 92:18 93:5,22 94:3,12 95:6,7 news's 14:25 19:15 155:4 newspaper november 1:14	15:11 17:12	69:3,16 78:17,21	228:18 232:2	47:1,11,24 48:10
89:16 142:3 92:18 93:5,22 19:15 155:4 noticed 157:4 146:22 150:25 94:3,12 95:6,7 newspaper november 1:14	33:8,10 40:17	82:2 83:14,15	233:14	48:13 219:4
146:22 150:25 94:3,12 95:6,7 newspaper november 1:14	63:7,20 64:7,8	84:16 89:23	news's 14:25	229:4
	89:16 142:3	92:18 93:5,22	19:15 155:4	noticed 157:4
152:17,22 95:11 105:13,22 61:25 2:9 5:5 46:16	146:22 150:25	94:3,12 95:6,7	newspaper	november 1:14
	152:17,22	95:11 105:13,22	61:25	2:9 5:5 46:16

[november - okay]

61:19 201:16	_	13:24 14:7,7,8	107:16 141:14
202:12 203:9	0	13.24 14.7,7,8	156:20 171:18
234:21 235:8	o 3:2 5:1 71:1	126:4,7 144:18	190:23 198:12
236:18	oath 9:13 10:6	·	203:19
	15:9 27:13	154:19 229:6,9	
number 28:9	33:23 235:6	obsessive 227:14	officer 141:14
54:10 69:6 72:4	obispo 66:25	obtain 94:20	203:16 206:12
77:5 91:9 96:5	object 11:12	96:16	222:6 223:3
96:15 97:1	objection 12:5,7	obtaining 147:1	officers 159:7
107:7 116:4	12:9,16 14:4	obtains 186:8	offices 51:19
120:25 121:24	27:3 29:23,23	obvious 222:13	183:6 188:8
126:12 131:16	31:12 41:23	obviously 11:20	official 1:7 29:12
131:18 133:17	43:2 44:1,10	23:19 25:7	51:15 120:6
144:7,13,16,21	45:3 53:3 55:7	40:22 51:14	206:10
145:4,9,9,20,23	58:10 65:4 89:9	61:6 62:23	officials 162:18
148:24 150:10	92:3,20 103:23	77:16 78:16	220:14
150:11,14	110:3,13 118:7	100:23 107:2	offline 102:21
152:21 153:24	119:3,23 120:19	111:10 115:2	oh 21:16 28:19
170:22 174:18	121:8,19 122:18	137:4 142:17	39:9 47:13 67:1
177:15 178:10	123:3 124:8,17	157:2 165:6	68:10 71:5
180:15,16,17	125:3,12 126:10	175:14 191:17	73:11 76:8
181:10 189:25	127:5 129:2	194:11,12	77:22 84:8
193:17 201:20	130:1,10 132:2	216:16 220:15	111:24 113:8
203:22 232:17	130:1,10 132:2	occasions 7:1	135:13 140:5
numbered 235:9	135:9 137:1	occurred 88:12	141:17 142:3
numbers 74:1	140:9 142:24	142:4	164:15 172:17
77:3,3 88:4	144:9 147:5	occurring	177:21 178:7
96:11,12 103:21	161:5 164:19	151:24 208:21	182:21 187:15
150:6,13 184:21	165:23 168:15	210:2	189:5 192:21
184:23	189:13 194:17	october 6:17	198:24 229:8
nye 119:11,13	195:4,21 200:17	220:25	ohio 139:8
122:4 178:15	201:9 207:19	odyssey 82:15,18	141:23
183:11 184:6	201.9 207.19	82:20 83:4,6	okay 10:2,17
192:14 193:15	211:2 224:6	offered 191:20	12:11,25 16:20
200:10 201:4,16		191:21,23	27:6 28:21 32:8
202:11 203:9,14	229:13 230:3,11	216:15	32:10 33:15
208:9 209:22	objections 3:11 8:25 10:20	offering 190:12	34:17 38:2 39:7
233:24		office 2:20 50:16	39:17 42:4,25
	11:11,11 12:18	51:1,5,12 71:9	45:11 46:23
	12:21 13:7,12,19	, ,	

[okay - p.m.]

48:1 49:8 51:13	201:14 202:1,25	108:12 146:9	organization
53:21 54:12	203:20 204:10	174:19 181:2,5	91:2
55:24 57:17	205:20 209:19	185:14 199:10	organizations
61:5 66:12,17	210:14 215:22	221:25	32:18
67:18,24 68:6,13	217:10 218:16	open 72:22,23	orientation 90:2
68:20,24 69:14	219:10 223:10	74:2 146:23	oriented 169:14
69:21 70:10	223:10,10 224:9	205:6 208:5	originally 200:2
72:16 73:14,21	225:24 228:9,15	opened 144:7,15	outlets 107:11
74:11,12 75:20	228:20 229:8	144:20 158:3	outside 111:11
75:25 76:4,25	231:15 232:13	opening 193:7	127:6
77:6,12,16 78:3	233:5 234:16	openness 152:3	overbroad 31:13
78:7,14 81:15	oklahoma 139:8	opens 215:25	53:4 55:8 58:11
82:10,18 83:13	old 73:16 74:24	operating 18:18	65:5 92:21
84:15,22 85:14	117:10 156:24	188:1	103:24 118:8
91:9 94:1,10	164:25 168:18	operators 60:16	119:4 122:19
95:3 97:8,25	olden 167:6	opinion 225:15	123:4 130:2,11
98:24 99:7	older 208:1	opponent 114:21	132:14 133:11
100:1,2,6 103:10	olis 70:23,24,25	opportunity	135:10 142:25
103:16 104:3	omundson 1:7	9:25 16:6,7 19:9	144:10 147:6
105:3 108:16	2:24 5:9,25	45:24 98:22	161:6 164:20
110:11 112:16	once 22:6 29:20	141:7 196:16	165:24 168:16
118:3,11,12,13	30:2 41:17	226:17,21,23	194:18 195:5,22
120:23 121:14	52:11 85:15	opposed 61:25	207:20 208:24
122:15 124:13	87:21 88:4,7	87:24	210:6 229:14
128:1 132:21,22	107:5 109:23	optional 79:20	230:4,12
138:5,9,10	119:22 143:24	orange 73:15	overnight 156:3
139:15 140:2,7	144:1 168:20	83:9 183:13,22	156:4
140:15,19,24	233:9	183:24 184:13	overriding 131:6
144:21,23 154:5	ones 52:7 65:20	order 4:6 89:4	152:25
154:11 167:10	66:15 77:14	96:10 146:5	owned 199:2
167:16 172:22	175:21,25	162:14 163:7,7	p
173:6,7,9,12,16	187:18 206:5,7	190:18 232:14	p 5:1 204:5,5
175:15 176:25	210:13	oregon 76:4,5	p.m. 34:15,24
181:19 183:15	ongoing 76:6	78:16 82:8,9	138:11,12,12,14
184:18 185:13	79:1,2	141:23 164:8	140:25 141:1,1,3
188:14 189:23	online 61:8	185:12 191:11	203:1,2,2,4
190:5 193:1,17	63:21 71:1	193:3 197:3	210:15,17,17,19
194:21 198:23	74:20 77:7 79:6		

[p.m. - places]

227:18,19,19,21	194:16 199:1	peach 70:1,5	permission
234:22,23	218:20 231:2,24	pending 8:14	108:5
pacer 20:5 97:15	participated	71:16 78:17,18	permitted 92:13
97:16,22 146:18	153:4	78:18,22,23	104:14 105:24
page 3:4,10 4:2	particular 35:16	80:17	126:3
8:7 57:18 87:1	52:19 96:8	pennsylvania	person 87:21
105:9 232:21,25	179:9	139:8	101:19 117:21
pages 3:12,14,15	parties 169:7	people 28:23	147:11 159:2
3:18,20,22,25	234:5	50:23 73:23	170:10
4:3,5,7 235:9	party 110:21	74:5 148:19	personal 37:6,12
paid 71:10 75:14	181:10	168:6 170:18,19	37:24 55:3
paisner 2:14	pasadena 6:19	170:21 179:7	personnel 116:5
5:23	6:21	183:5,7 186:2	petition 56:10,13
paper 20:17,25	pass 152:17,18	192:5 219:19	petitions 56:17
21:6 22:23	passage 166:10	pepin 188:18	57:3,4
27:10 28:1	166:12,18	190:7,8 204:5,7	phil 20:20 21:23
30:14,15 59:22	passed 24:1	205:15	25:8 26:17 59:5
60:1 74:19,23	80:20 168:19	percent 25:22	59:7
78:2,6 79:19,20	passes 177:19	79:21	phrase 110:9
79:24,25 80:7	179:7	percentage	113:24 130:4,5
83:12,18,21 84:2	patchwork 86:9	177:14 178:10	166:9
84:10,16,17,21	path 102:5,6	178:13,24	pick 178:1
85:8,11,14 91:1	146:21,25	perfect 42:14	picture 99:16
118:9 148:9	patient 125:19	139:3 172:11	piece 30:13
156:6 157:14	pattern 170:15	perfectly 185:14	184:21 200:14
184:22 198:18	pause 172:10	period 92:10	pierce 76:10
207:23 208:21	pay 62:23 63:3	101:8 102:11	pierre 221:1
210:9	86:22 97:16	122:8	place 70:13
paragraph 12:20	158:16 169:8	periodic 92:18	72:20 73:2
13:11 232:20,22	189:20 197:15	93:4,22 94:2,12	87:23 89:5,15
233:1,4	197:16,19,22	95:6 105:22	133:20 168:8,21
parallel 119:1	198:16	periodically	191:13 236:12
parameters	paying 189:16	95:11	placed 118:6
175:9	192:19	periods 22:6	133:24 134:5
part 19:8 75:15	payment 169:6	permanent 69:5	169:10
89:13,22 96:9	189:5	145:3,9,23	placer 75:6
159:1 163:24	pdf 169:8	150:14 180:17	places 160:20
164:9,13,16			

[plaintiff - pretty]

plaintiff 1:5 2:14	policy 71:20	powerpoint	72:1,19 73:5,18
3:19 4:4 5:21	169:13,15	221:23 223:21	74:25 75:2,8,10
96:2,4,15,24	political 219:17	225:6	76:6 77:13 78:8
103:21 181:9	pop 7:17 46:21	pr 114:10	78:11,12 80:5
plaintiff's 3:11	149:22	practical 153:12	83:10 85:12,17
3:16 104:15	portal 72:2 74:7	155:6 159:5	87:12,23 88:3,4
plaintiffs 95:23	100:20 102:1	practicality	88:5,6,11,24
plan 12:13 99:6	103:19,20 104:9	211:11	89:4 90:6,15,23
planet 74:15	146:6 147:2,3	practice 50:21	91:5,11,16,24
planed 225:14	181:16,20	208:2 212:2	92:9,10 108:1
plans 225:17	portals 103:9	practiced 47:13	111:16,22 112:4
plans 223.17 play 27:16 200:4	portion 19:25	practitioner	112:9 114:4
plays 95:1	234:3	168:3	115:15 116:7,23
pleadings 58:5	position 17:19	pre 23:20 118:18	150:2,9,17
please 5:18 6:3	40:6 41:7,10,14	118:22	154:25 158:23
8:18 31:17 95:3	43:23 58:6	preceding 84:6,9	158:24 159:8,15
97:13 99:21	119:14 126:18	predecessor	159:19 160:12
111:1 128:24	177:12 184:24	20:19	160:17 162:4
137:6 202:5	211:23 218:21	prefer 27:17	163:21 187:1
221:8,20 232:17	possession 29:13	63:11 89:19	188:10,23 189:2
pllc 2:18	29:18 30:2	108:25	189:4,12 190:6
plus 78:13,14	possessive	preliminary	190:20 192:15
point 14:12	198:24	3:20 4:5 173:10	194:23 195:17
20:10 26:1,6	possible 25:22	218:21 226:7,11	195:20 196:4,21
28:2,4,5,15,21	36:7,8,10 38:21	228:18	197:7 201:8,18
32:24 38:16	63:14,17 108:15	prepare 46:5	202:2,13 203:11
42:23 84:2	possibly 167:25	47:2 48:2	204:15 207:4,11
107:20,24 108:4	post 2:20 17:23	present 2:24	213:14,15
110:15,17 111:2	17:25 57:4	225:17	214:12,24
126:5 130:15	76:13,20 79:16	presentation	215:20 216:5,10
144:8 145:18	80:2	112:2,4,7 115:21	216:21,23
154:25 161:11	postpone 11:19	preserve 165:6	217:13,25
165:11 171:3	126:6	press 60:21 63:6	218:20 220:9
192:13 193:5	posts 62:20	63:13 64:6,11,19	223:23 226:12
211:23 216:24	potentially	65:3,7,13,17	presume 161:9
232:1	133:11	66:6,9 67:12,22	pretty 70:17
points 28:9	power 39:12	67:25 68:9 69:7	84:14 86:13,24
68:18 74:18		70:8,10,18 71:12	96:3 122:1

[pretty - provides]

156:12 159:13	205:13 221:24 222:2 223:21 225:7 228:1 27 228:1 27 228:1 27 28:1 28 23 82:18 27 28 21:23 82:18 28 21:23 82:18 28 21:23 82:18 28 21:23 82:18	108:21 109:3,7 proper 210:12 210:14 property 55:2 propounded 235:12
160:19 161:12 166:11 171:19 161:16,19 162:4 171:23 172:1,21 162:6 174:15 196:7 230:13 179:22 180:2 problematic	225:7 228:1 product 81:22 81:23 82:18 114:3 118:1	210:14 property 55:2 propounded 235:12
162:6 174:15 196:7 230:13 pr 179:22 180:2 problematic	81:23 82:18 114:3 118:1	propounded 235:12
162:6 174:15 196:7 230:13 pr 179:22 180:2 problematic	81:23 82:18 114:3 118:1	propounded 235:12
179:22 180:2 problematic	81:23 82:18 114:3 118:1	235:12
-		.
107.11 191.3 101.0,11	135:8,12,15	proud 34:1
192:5 195:25 problems 195:14		proved 164:6
209:16 215:25 procedure 13:15	137:3,5,15,17	provide 6:16
227:13 14:3,6,23 37:24	138:1 182:18	9:16 10:25 16:2
	220:7,7	16:17 37:8 48:8
	oroducts 68:5	85:12 90:7,15
price 190:11,12 37:13,25	218:24	130:25 156:15
191:15,25 193:7 proceed 15:1 p r	orofile 52:4	161:8 164:4,5
201:13 proceedings pr	orogram 81:8,9	165:20 175:4,9
primarily 48:20 57:5 172:10	81:10 92:8,12,17	196:3,7 197:10
primary 95:17 233:24	92:25 93:3,3,8	210:22 211:17
principle 147:15 process 19:23	93:13,16,21 94:2	223:2,23 226:24
prior 15:15 20:16 21:6,15	94:12 95:5,10,19	232:2
38:16,20 48:25 22:8 23:1 24:14	96:22 97:5,6,15	provided 16:19
100:25 120:19 27:11,13,25	97:20 99:3,9,15	17:11 23:17,22
120:21 124:8,11 30:15 58:3	99:17,21 100:16	26:8,15 38:12
125:3,12 140:9 59:25 60:3	101:2,18,25	40:7,10 44:16
141:8 200:17 80:19,24 81:4	102:10 103:3,17	67:24 80:5
201:9,15 202:10 84:3 143:22	104:7 105:7,12	109:24 131:11
207:9 210:2 144:1 149:25	105:16,23 106:4	144:16 154:4,13
224:7 226:24 150:5,7 166:22	106:10,16 108:2	174:5,10 186:19
236:8 209:9 230:19	108:5,6,18 109:1	188:10,25
privilege 13:25 processed	112:10,14	193:14 196:17
14:9,11 233:10	114:17 116:8,15	204:19 211:21
pro 181:24 processes 81:1	116:19 135:16	220:21 222:14
probably 65:19 processing 74:1	138:23 139:20	222:20 223:5,6
109:5 110:13 76:13,20 79:16	139:21,23	225:7
137:11 163:14 80:2,13 145:3	193:22 216:17	provider 220:17
174:1,25 180:22 166:17,20 pr	orogramming	providers 68:2
194:8 222:19 168:14 211:9	116:22 217:13	provides 103:19
probate 56:24 212:3,5,12 p r	orograms 92:12	104:9 155:8
230:19	105:24 108:14	

[providing - quick]

providing 9:4,20	pull 104:12	120:2 122:25	75:11 76:7 78:8
10:5,7,9 15:9,10	171:10 172:24	125:7 128:16,25	78:11,11,12
15:12 22:23	173:2 220:20,21	130:20 132:17	83:11 85:13,18
41:4,8,11,13	226:14,18	134:3 137:7	87:13,23 88:3,5
47:10 79:6 80:2	purpose 12:7	150:23 151:18	88:6,6,7,11,12
109:15 127:3	133:19 221:9	152:14,20 153:3	88:24,25 89:4,5
128:13,18 143:5	pursue 155:19	166:1 170:1	90:6,15,24 91:6
153:7,19 162:1	211:20	187:8,20 189:16	91:11,16 92:10
178:15 183:10	push 197:23,24	193:25 200:5	92:10 108:1
188:23 189:9	put 48:19,24	201:1,1,21	111:16,23 112:5
211:12	68:10 70:13	202:18,20	112:10 115:9,15
public 2:7 20:2	72:20,25 89:5	204:10,24 206:8	116:7,24,25
50:9 53:7 58:20	99:14 108:11	211:10,14	117:1 118:16,25
58:23 69:3	109:9 117:17	214:14 216:14	119:1 150:2,9,18
70:19,20 72:20	135:20 145:2	225:18 232:6	187:2 188:11,23
72:22 73:25	153:14 160:17	questioning	189:2,4,12 190:7
74:3,16,20 75:8	164:24 166:17	142:16	190:20 192:16
78:10,11 79:8	169:23 170:14	questions 8:21	194:23 195:17
80:5 81:3 88:7	173:23 202:17	9:16,19 10:7,10	195:20 196:4,21
88:12,24 89:4	219:8 222:9	14:14,16,23	197:7 201:8,18
91:25 92:12	puts 170:22	15:10,13,18 16:3	202:3 203:11
105:23 113:17	putting 74:20	17:10 20:13	204:16 207:11
117:1,2 118:20	164:22 202:15	33:17 38:13	212:17 213:14
118:24 146:8	q	44:13 103:6	213:15 214:12
154:20 156:17	qualify 33:19	141:8 142:14	214:24 216:5
159:3,6 160:12	70:21	172:2 194:13	217:14,25
160:16,17,18,18	quality 18:20	196:24 228:7	218:20 220:9
168:6 190:24	question 8:14,17	231:12,14	226:12
222:1 225:15	14:5 15:7 16:17	233:17 235:11	queues 64:11,20
235:24 236:6,24	16:20,23 21:19	235:12	65:7,17,23 67:13
publications	31:15 33:7,9	queue 60:21	67:25 75:1
18:20	36:12 40:15,19	63:6,13 64:6	77:13 91:25,25
publicly 69:6	41:2,12,12,19	65:3 66:6,9	143:20 162:4
222:3	44:22,23 50:6	67:22 69:4 70:9	207:4
published 35:25	51:9,12,22 58:19	70:12,18,19	quick 12:1 45:13
158:9	65:9 88:7 90:11	71:12 72:1,20	70:3 76:18 98:1
publishing 18:17	96:21 111:1	73:6,19,25 74:16	98:8 102:13
		74:25 75:2,8,9	103:1 140:16

[quick - referencing]

172:20 227:12	reads 130:14	70:8,16,23 74:24	130:9,18 133:24
quicker 132:11	ready 12:4	129:9,17 131:4	134:5 137:9
quickly 8:6	real 55:2 76:18	132:6,20,23,23	134.5 137.9
70:20 194:20	102:13 148:18	145:10 148:10	140:25 141:4,5
	172:20 179:8		151:9 172:12,16
quit 88:9		152:23 155:1,12	172:19 190:24
quite 31:14 34:1 36:7,8,10 51:9	reality 156:5 178:21	161:11 162:1,7	190:25 203:1,5
72:14 83:25		164:6 196:7	·
	really 58:13	207:24 209:25	210:13,16,20
116:5 157:1,5,6	68:18 72:14,15	211:7 221:14	219:6 223:1
162:3 164:1	79:5 106:18	receive 131:21	227:18,22
166:25 180:10	112:24 127:19	132:9,11 159:19	232:19 234:8,22
183:5 186:2	130:17,20 152:7	169:10 170:9	236:15
225:20 231:21	167:23 186:2	219:16	recorded 5:15
quits 87:21	188:6 212:24	received 22:19	recording 5:4
quote 214:8	231:7	32:12 41:17,20	13:4 45:21
r	reason 9:7 11:8	117:4 166:4	98:17 138:14
r 5:1 59:12	27:12 51:21	219:13,14	141:3 203:4
115:18	54:7 59:23 60:1	224:16	210:19 227:21
radar 174:6	106:10 126:13	receives 132:24	records 113:5
radio 156:8	131:6 152:4,25	133:2 154:21	118:23,24 165:7
rain 7:22	153:20 161:12	receiving 52:10	165:7 185:24
raised 213:18	196:8 202:1,2	recognized	red 176:10
214:10	reasonable	109:8	183:13 184:1,2
raising 58:8	161:17,18,20	recollection 24:7	184:15,17
rare 151:3,20	185:7	24:8,18 25:3,17	227:15
reach 109:25	reasoning 43:7	38:23 39:9,10,15	reduced 236:13
reaching 142:11	reasons 89:18	199:24	reductions 87:3
read 46:6,6 55:5	141:25 161:16	recommend	reed 18:1
106:1 128:25	162:6	11:19	refer 124:5
129:1 130:7,9,16	rebuttal 147:21	reconsider 234:3	reference 111:22
130:18 137:7,9	recall 26:10,10	record 5:4,6,19	182:5 221:6
139:25 156:6	26:12,24 27:5	6:16 9:10 12:2	referenced 148:3
204:1,8 233:3	50:20 51:24	12:12,14,15,24	205:15 206:25
235:10	53:19 153:7	13:1,2,5,7 14:19	218:23 225:3
reading 11:10	196:22 197:6,9	29:19,20,24 30:3	228:2
47:1 104:24	232:4	30:6 45:18,22	referencing
7/.1 107.27	receipt 15:1	98:14,18,20	148:12
	40:10 41:5,11	120:6 129:1	

[referred - represent]

referred 108:18	226:1,4,10,11	remotely 2:13	88:10,20 90:20
207:25	relating 217:2	5:13 20:5 63:11	90:21 91:4,10,18
referring 40:16	217:12,24	63:15 88:21	94:16,16 95:17
46:15 55:13,13	218:20	89:7	95:19 96:19,25
190:7 208:19	relayed 115:2	remove 13:10	106:11 129:1
221:3	release 56:10	rep 115:6,8	130:7,9,18 137:9
refile 151:4	relevancy 13:24	repeat 182:11	150:12 153:25
refiled 150:18	14:8	rephrase 104:4	158:17 172:13
refine 52:15	relevant 124:6	rephrasing	172:21 232:16
reflect 11:7	relief 89:10	209:15	236:5
reflects 14:18	227:9	replace 88:10,13	reporter's 236:1
refreshed 199:18	relies 116:21	replaced 87:22	reporters 19:11
refuse 106:14	rely 21:4 124:5	report 19:19,20	33:4 35:11,14,18
refused 199:2	relying 125:10	19:24 22:18	36:4,13 39:25
regard 26:20	128:10,12,15,17	29:10,17 32:20	50:15 52:2 59:3
189:24 197:9	128:20 129:4	32:20 33:1	59:9 60:17
regarding	remainder 13:23	34:10,11,12,14	86:18 87:16
125:16 213:12	71:17 82:10	35:8,24 36:5,14	88:9 89:25 90:4
regardless 64:4	remains 87:8	36:16,17,19,20	90:13 105:22
89:16,17 90:23	remarkable	37:19 40:1	106:14 117:2
149:12,15 174:2	65:25 72:15,15	49:18,20,21 58:1	157:18,23
region 90:5,13	remember 28:3	59:21 62:3,9,16	160:15
register 146:18	51:10 54:9 71:3	87:7 89:25	reporting 2:6
146:22 159:11	86:11,14 94:18	103:14 107:8,13	5:16 20:25 21:6
registration 69:7	136:15 188:6	107:14,15 148:8	22:9 26:13
72:23 74:21	198:3 206:1,5	150:10 151:9,16	31:11 32:3,13,17
75:11 86:23	231:23	156:15 157:8	34:18 36:11
97:16 146:11,13	remembered 2:3	162:17 188:19	37:21 60:19
regular 163:7	17:3	188:21 203:17	150:8 159:3
reject 213:2,4	remembers	204:1,8,14 205:7	163:10
rejected 150:3	168:4	205:8,9	reports 18:18
150:18,22	remind 141:12	reported 1:25	48:16 49:14
related 22:17	reminds 76:8	5:15 29:22 30:4	50:2 60:9 86:21
39:1 56:20	remote 1:13 2:1	150:16	86:24 87:9 90:4
71:17 91:8,24	2:3 5:6 61:8	reporter 2:7 6:3	90:13 157:1
112:20 127:18	64:13,16 72:9,10	9:6 19:16 50:24	158:9
154:16 170:1	86:23 87:11,23	63:7,10,12,14,20	represent 62:6
209:4 223:23	90:7,16,25	86:20 87:8 88:2	114:15 160:16

[represent - reviews]

192:14 229:2	requires 169:6	responsible	85:12,17 87:12
232:13	requiring 74:21	19:20 34:17	87:23 88:3,5,6,6
representation	reserved 150:19	48:20 60:8,16	88:7,11,12,24,25
203:14 207:10	reserving 14:21	134:15	89:4,4 90:6,15
209:22 227:8	reside 6:18	responsive 10:25	90:24 91:5,11,16
representations	86:19	rest 55:23	91:25,25 92:9,10
188:10	residing 235:24	restrictive 131:7	108:1 111:16,22
representatives	resolve 211:25	153:1 161:20	112:5,9 114:4
188:16	respect 14:23	restricts 154:24	115:9,15 116:7
represented 54:5	16:7 18:12	resubmitted	116:24 118:22
200:10 208:8	21:14 22:12	151:8	128:22 150:2,9
representing	37:15 58:4 59:3	result 65:2 66:7	150:18 187:2
181:23	64:19 65:1,6	73:7 87:4	188:11,23 189:2
represents 181:3	83:9 87:12 93:1	178:23 197:17	189:4,12 192:16
227:9	99:23 100:24	198:17	194:5 195:17,20
reps 115:4	134:21 137:24	retiring 198:4	196:4,16,21
request 28:22	139:24 146:2	return 172:5	197:7 201:8,18
29:3 37:3 65:13	198:19 210:24	returns 150:24	202:14 203:11
66:11,21,22,23	214:11 215:1	reuters 187:16	204:16 207:4,11
66:24,25 67:2	224:7,20 228:17	reversed 80:16	212:18 213:14
71:25 73:8,9,10	228:21 234:1	review 9:25	213:15 214:12
73:12 74:10,12	respectfully	10:12 14:25	214:24 215:21
75:6,7 76:3 86:5	212:1	16:6,7 22:17	216:5,11,21,23
86:17 87:5	respective 233:9	26:9 35:1,4	217:14,25
100:24 111:3,4	respond 102:24	55:16 60:21	218:20 220:9
111:17 194:24	responds 105:20	63:6,13 64:6,8	223:24 226:12
221:15 224:3,13	response 16:17	64:11,19 65:3,7	226:21,24 230:9
requested 29:1	16:18,20 17:12	65:13,17,23 66:6	reviewed 37:23
188:12 234:25	113:22 153:8	66:9 67:13,22,25	38:5,17 47:2
requesting	214:2 224:13	68:9 69:3 70:9	127:17 228:22
219:23	responses 3:16	70:10,12,18,18	230:21 233:10
requests 3:17	9:5 11:14 14:24	70:19 71:12,20	reviewing 10:13
65:15 104:16	104:15 153:22	72:1,19,20 73:6	22:9 25:13 27:9
221:13 226:10	154:3 195:19	73:19,25 74:3,16	37:17 48:6
require 142:2	responsibility	74:20,25 75:1,2	59:25
197:15	18:15,21 32:17	75:8,8,11 76:6	reviews 81:1
required 14:5	95:18 174:24	77:13 78:8,11,11	122:15
194:24 197:19	225:16	78:12 83:11	
	I	I	

[revise - sara]

rice 68:25 132:19 133:13 185:23 68:7 70:7 92:25 68:7 70:7 92:25 99:21 100:4,7 74:9 101:7,12 113:12 101:7,12 113:12 12:118 142:14 74:9 101:7,12 113:12 101:7,12 113:12 12:18 140:7 74:9 101:7,12 113:12 101:7,12 113:12 12:18 140:7 74:9 101:7,12 113:12 <th< th=""><th>revise 11:13</th><th>130:13 131:4,17</th><th>river 2:20</th><th>run 65:16,18</th></th<>	revise 11:13	130:13 131:4,17	river 2:20	run 65:16,18
rice's 214:5 138:16 139:5,11 74:9 101:7,12 113:12 ridiculous 140:23 141:2,10 road 179:16 132:18 140:7 riding 23:4 143:7 147:16 role 37:5 60:13 70:14,15 137:24 149:20 157:2 runner 30:14 31:20 168:19 right 5:3 6:12 149:24 151:22 roles 70:19 95:2 runner 30:14 31:20 168:19 133:3,6 15:5 154:10 155:14 155:21 156:5 roles 70:19 95:2 runner 30:14 31:20 168:19 19:5 23:15 157:18,19 room 61,22 running 18:16 19:5 23:15 157:18,19 rough 99:13 100:9 101:9 58:17 99:11 101:2,13 107:1,3 152:17,20,23 46:2 168:22 169:15 169:18 170:1,18 round 180:10,10 100:9 101:9 114:23 140:4,5 100:9 101:9 118:25 145:8 49:1,2 53:12,24 170:24 171:2,25 179:25 180:12 round 180:10,10 118:25 145:8 62:17,18,25 179:25 180:12 180:21 181:18 122:17 12:7 128:23 112:4 129:15 6:22 s	rice 68:25		185:23	68:7 70:7 92:25
ridiculous 140:23 141:2,10 road 179:16 132:18 140:7 149:20 157:2 149:20 157:2 runner 30:14 132:18 140:7 149:20 157:2 runner 30:14 132:18 140:7 149:20 157:2 runner 30:14 149:20 157:2 runner 30:14 31:20 168:19 70:12 70:12 70:12 70:	158:18	136:10 138:6,13	riverside 73:22	99:21 100:4,7
222:11 riding 23:4 141:18 142:14 role 37:5 60:13 149:20 157:2 runner 30:14 31:20 168:19 right 5:3 6:12 149:24 151:22 role 70:19 95:2 runner 30:14 31:20 168:19 7:25 11:12,13 152:16,22,23 roles 70:19 95:2 runner 30:14 31:20 168:19 13:3,6 15:5 154:10 155:14 roles 70:19 95:2 runner 167:6 running 18:16 16:11,14 17:15 155:21 156:5 155:21 156:5 room 6:1,22 running 18:16 19:5 23:15 155:18,19 rough 99:13 100:9 101:9 100:9 10:9 118:25 145:8 s s s s s s s s s s s <t< td=""><td>rice's 214:5</td><td>138:16 139:5,11</td><td>74:9</td><td>101:7,12 113:12</td></t<>	rice's 214:5	138:16 139:5,11	74:9	101:7,12 113:12
riding 23:4 143:7 147:16 70:14,15 137:24 runner 30:14 right 5:3 6:12 149:24 151:22 70:14,15 137:24 runner 30:14 7:25 11:12,13 152:16,22,23 roles 70:19 95:2 runner 30:14 13:3,6 15:5 154:10 155:14 155:21 156:5 155:21 156:5 112:8 roles 70:19 95:2 runner 30:14 31:20 168:19 runner 30:14 31:20 16:20 30:13 40:12 40:13:10 10:21:13 107:1,3 10:21:13 107:1,3 10:	ridiculous	140:23 141:2,10	road 179:16	132:18 140:7
right 5:3 6:12 149:24 151:22 141:16 roles 70:19 95:2 runners 167:6 running 18:16 58:17 99:11 running 18:16 58:17 99:11 10:2,13 107:1,3<	222:11	141:18 142:14	role 37:5 60:13	149:20 157:2
7:25 11:12,13 152:16,22,23 roles 70:19 95:2 runners 167:6 13:3,6 15:5 154:10 155:14 room 6:1,22 running 18:16 19:5 23:15 157:18,19 rough 99:13 100:9 101:9 101:2,13 107:1,3 25:24 30:23 158:13 159:21 100:9 101:9 108:13,14 114:23 140:4,5 45:17,20,23 46:2 168:22 169:15 212:15,16,24 215:22 140:13,17 45:17,20,23 46:2 168:22 169:15 roudh 180:10,10 routine 95:20 46:4,14 48:15 169:18 170:1,18 routine 95:20 rpr 1:25 236:23 rubber 170:24 171:2,25 routine 95:20 rpr 1:25 236:23 rubber rpr 1:25 236:23 subber rpr 1:25 236:23 subber rule 3:11 16:16 42:11,16 124:14 rules s 3:9 4:1 5:1 71:1 sacramento 74:23 sacramento 74:23 sacramento 74:23 sacesemento 74:23 sacesemento 74:23 sacesemento 74:23 sacesemento 74:23 sales 112:13 114	riding 23:4	143:7 147:16	70:14,15 137:24	runner 30:14
13:3,6 15:5 154:10 155:14 room 6:1,22 running 18:16 16:11,14 17:15 155:21 156:5 157:18,19 100:9 101:9 101:2,13 107:1,3 19:5 23:15 158:13 159:21 100:9 101:9 101:2,13 107:1,3 108:13,14 31:2,5 32:14 167:18 168:7,21 212:15,16,24 108:13,14 114:23 140:4,5 45:17,20,23 46:2 168:22 169:15 round 180:10,10 runs 108:10 108:13,14 49:1,2 53:12,24 170:24 171:2,25 round 180:10,10 runs 108:10 118:25 145:8 57:15 60:8 175:3 177:3 rubber 179:15 rule 3:11 16:16 42:11,16 124:14 125:17 127:7 s 3:9 4:1 5:1 71:1 sacramento 74:23 sace 114:16 sace 114:16 sace 114:16 114:16 sace 114:16 1	right 5:3 6:12	149:24 151:22	141:16	31:20 168:19
16:11,14 17:15 155:21 156:5 112:8 58:17 99:11 101:2,13 107:1,3 19:5 23:15 157:18,19 100:9 101:9 100:9 101:9 108:13,14 31:2,5 32:14 167:18 168:7,21 212:15,16,24 114:23 140:4,5 140:13,17 46:4,14 48:15 169:18 170:1,18 round 180:10,10 runs 108:10 runs 108:10 49:1,2 53:12,24 170:24 171:2,25 routine 95:20 rpr 1:25 236:23 runs 108:10 57:15 60:8 175:3 177:3 ruber 179:15 rule 3:11 16:16 22:11,16:124:14 69:9,19,25 70:22 178:25 180:12 rule 3:11 16:16 42:11,16 124:14 125:17 127:7 71:22 74:22 186:12 190:1,21 ruled 80:14 125:17 127:7 ruled 80:14 125:17 127:7 ruled 80:14 125:17 127:7 ruled 80:14 125:17 122:3 safe 165:9 sales 112:23 114:16 sales 112:	7:25 11:12,13	152:16,22,23	roles 70:19 95:2	runners 167:6
19:5 23:15	13:3,6 15:5	154:10 155:14	room 6:1,22	running 18:16
25:24 30:23 31:2,5 32:14 45:17,20,23 46:2 46:4,14 48:15 49:1,2 53:12,24 54:4,11,17 56:1 57:15 60:8 62:17,18,25 67:20 68:4,15 69:9,19,25 70:22 71:22 74:22 71:22 74:22 71:22 74:22 71:22 74:22 71:22 74:22 71:29 79:25 80:9,22 82:8 84:8,11 87:8 88:16 90:17 97:9,25 98:5,16 98:19 99:1 103:11 104:13 105:4,6 106:3,9 107:20 109:8,11 110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 158:13 159:21 100:9 101:9 212:15,16,24 215:22 215:22 round 180:10,10 routine 95:20 rpr 1:25 236:23 rubber 179:15 rule 3:11 16:16 42:11,16 124:14 125:17 127:7 ruled 80:14 rules 8:5 13:15 13:17 14:2,6,22 15:2 37:23 38:1 13:21 16:16 206:2,16 208:16 210:18 216:6 219:3,21 220:24 224:19 225:2 123:23 124:23 115:1 120:4 122:22 rings 193:18 ripe 30:4 ritual 234:13	16:11,14 17:15	155:21 156:5	112:8	_
31:2,5 32:14 167:18 168:7,21 212:15,16,24 114:23 140:4,5 45:17,20,23 46:2 168:22 169:15 215:22 140:13,17 46:4,14 48:15 169:18 170:1,18 round 180:10,10 runs 108:10 49:1,2 53:12,24 170:24 171:2,25 routine 95:20 runs 108:10 57:15 60:8 175:3 177:3 rubber 179:15 s s 62:17,18,25 179:25 180:12 rule 3:11 16:16 s3:9 4:1 5:1 71:1 sacramento 69:9,19,25 70:22 186:12 190:1,21 ruled 80:14 rules 8:5 13:15 sacramento's 76:6 77:20 193:1,16,19 197:5 200:20 15:2 37:23 38:1 safe 165:9 88:16 90:17 206:2,16 208:16 38:22,25 39:6,8 39:18,19 42:20 98:19 99:1 210:18 216:6 39:18,19 42:20 44:7,8,24,25 115:1 105:4,6 106:3,9 227:17,20,23 125:1,8,10 126:22 127:4,10 75:2,18 85:6 110:9 111:13,19 rights 14:22 rights 14:22 ruling 11:5 66:23 67:2 67:4 74:14 85:6 110:24 12:22 ritual 234:13 158:19 15:25.25 149:20	19:5 23:15	157:18,19	rough 99:13	101:2,13 107:1,3
45:17,20,23 46:2 168:22 169:15 215:22 140:13,17 46:4,14 48:15 169:18 170:1,18 round 180:10,10 runs 108:10 49:1,2 53:12,24 170:24 171:2,25 round 180:10,10 runs 108:10 54:4,11,17 56:1 172:2 173:2 rpr 1:25 236:23 ruber 179:15 62:17,18,25 179:25 180:12 rule 3:11 16:16 42:11,16 124:14 42:13 38:2:17 127:7 42:23 sacramento 74:23 safe 165:9 44:23 46:4:23 42:23 42:23 42:23 42:23 42:23 42:23 42:23 42:23 42:23 42:23 4	25:24 30:23	158:13 159:21	100:9 101:9	108:13,14
46:4,14 48:15 169:18 170:1,18 round 180:10,10 runs 108:10 49:1,2 53:12,24 170:24 171:2,25 routine 95:20 118:25 145:8 54:4,11,17 56:1 172:2 173:2 rpr 1:25 236:23 rpr 1:25 236:23 57:15 60:8 175:3 177:3 rubber 179:15 s 62:17,18,25 179:25 180:12 rule 3:11 16:16 s 67:20 68:4,15 180:21 181:18 42:11,16 124:14 sacramento 69:19,19,25 70:22 186:12 190:1,21 ruled 80:14 rules 8:5 13:15 78:13,17 79:25 197:5 200:20 13:17 14:2,6,22 safe 165:9 80:9,22 82:8 202:18 203:3,6 38:2,6,9,10,18 38:22,25 39:6,8 88:16 90:17 206:2,16 208:16 38:22,25 39:6,8 39:18,19 42:20 98:19 99:1 210:18 216:6 219:3,21 220:24 44:7,8,24,25 123:23 124:23 105:4,6 106:3,9 227:17,20,23 231:6 125:1,8,10 126:22 127:4,10 11:20 112:18 rigs 193:18 rigs 193:18 128:13,17,18,21 ruling 11:5 66:23 67:2 67:4 74:14 85:6 206:3,4 525.25 149:	31:2,5 32:14	167:18 168:7,21	212:15,16,24	114:23 140:4,5
49:1,2 53:12,24 170:24 171:2,25 routine 95:20 118:25 145:8 54:4,11,17 56:1 172:2 173:2 rpr 1:25 236:23 s 57:15 60:8 175:3 177:3 rubber 179:15 s 62:17,18,25 179:25 180:12 rule 3:11 16:16 s 67:20 68:4,15 180:21 181:18 42:11,16 124:14 sacramento 69:9,19,25 70:22 186:12 190:1,21 193:1,16,19 ruled 80:14 rules 8:5 13:15 78:13,17 79:25 197:5 200:20 15:2 37:23 38:1 38:2,6,9,10,18 safe 165:9 88:16 90:17 206:2,16 208:16 38:22,25 39:6,8 39:18,19 42:20 115:1 98:19 99:1 219:3,21 220:24 44:7,8,24,25 123:23 124:23 115:1 105:4,6 106:3,9 227:17,20,23 227:17,20,23 125:1,8,10 126:22 127:4,10 111:20 112:18 rights 14:22 rights 14:22 ruling 11:5 66:23 67:2 113:22 118:13 ripe 30:4 ritual 234:13 ritual 234:13 ritual 234:13 ritual 234:13 rise in the rice 3:11 16:16 42:11,16 124:14 rice 3:11 16:16 42:11,16 12	45:17,20,23 46:2	168:22 169:15	215:22	140:13,17
54:4,11,17 56:1 172:2 173:2 rpr 1:25 236:23 s 57:15 60:8 175:3 177:3 rubber 179:15 s 3:9 4:1 5:1 71:1 62:17,18,25 179:25 180:12 rule 3:11 16:16 sacramento 67:20 68:4,15 180:21 181:18 42:11,16 124:14 sacramento 69:9,19,25 70:22 186:12 190:1,21 ruled 80:14 rules 8:5 13:15 76:6 77:20 193:1,16,19 197:5 200:20 13:17 14:2,6,22 sacramento's 78:13,17 79:25 202:18 203:3,6 203:25 204:6 38:2,6,9,10,18 38:2,6,9,10,18 sales 112:23 88:16 90:17 206:2,16 208:16 39:18,19 42:20 44:7,8,24,25 115:1 san 2:15 66:25 67:1,6,7 72:24 73:2,7,13,15 75:2,18 85:6 67:1,6,7 72:24 73:2,7,13,15 75:2,18 85:6 60:23 67:2 67:4 74:14 85:6 60:3,9 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 74:23 52.5,25 149:20 111:20 112:18 ripe 30:4 ripe 30:4 ripe 30:4 ruling 11:5 75:2,25 149:20 120:4 122:22 123:23 124:23 125:1,8,10 126:22 127:4,10	46:4,14 48:15	169:18 170:1,18	round 180:10,10	runs 108:10
57:15 60:8 175:3 177:3 rubber 179:15 s 3:9 4:1 5:1 71:1 62:17,18,25 179:25 180:12 180:21 181:18 42:11,16 124:14 sacramento 69:9,19,25 70:22 186:12 190:1,21 186:12 190:1,21 ruled 80:14 sacramento's 71:22 74:22 186:12 190:1,21 ruled 80:14 rules 8:5 13:15 sacramento's 78:13,17 79:25 197:5 200:20 197:5 200:20 15:2 37:23 38:1 safe 165:9 80:9,22 82:8 202:18 203:3,6 38:2,6,9,10,18 sales 112:23 88:16 90:17 206:2,16 208:16 39:18,19 42:20 salesperson 97:9,25 98:5,16 210:18 216:6 39:18,19 42:20 44:7,8,24,25 103:11 104:13 224:19 225:2 123:23 124:23 125:1,8,10 105:4,6 106:3,9 227:17,20,23 125:1,8,10 126:22 127:4,10 110:9 111:13,19 rights 14:22 rings 193:18 128:13,17,18,21 113:22 118:13 ripe 30:4 ritual 234:13 ruling 11:5 525:25 149:20	49:1,2 53:12,24	170:24 171:2,25	routine 95:20	118:25 145:8
62:17,18,25 179:25 180:12 rule 3:11 16:16 sacramento 67:20 68:4,15 180:21 181:18 42:11,16 124:14 74:23 69:9,19,25 70:22 186:12 190:1,21 rule 80:14 74:23 76:6 77:20 193:1,16,19 rules 8:5 13:15 safe 165:9 78:13,17 79:25 197:5 200:20 13:17 14:2,6,22 safe 165:9 80:9,22 82:8 202:18 203:3,6 38:2,6,9,10,18 saless 112:23 88:16 90:17 206:2,16 208:16 38:22,25 39:6,8 39:18,19 42:20 salesperson 98:19 99:1 219:3,21 220:24 44:7,8,24,25 123:23 124:23 125:1,8,10 105:4,6 106:3,9 227:17,20,23 125:1,8,10 126:22 127:4,10 75:2,18 85:6 110:9 111:13,19 rights 14:22 rings 193:18 128:13,17,18,21 75:2,18 85:6 113:22 118:13 ripe 30:4 ruling 11:5 206:3,4 120:4 122:22 ritual 234:13 ritual 234:13 75:2,5 5 149:20	54:4,11,17 56:1	172:2 173:2	rpr 1:25 236:23	S
62:17,18,25 67:20 68:4,15 69:9,19,25 70:22 71:22 74:22 76:6 77:20 78:13,17 79:25 80:9,22 82:8 84:8,11 87:8 88:16 90:17 97:9,25 98:5,16 98:19 99:1 103:11 104:13 105:4,6 106:3,9 107:20 109:8,11 11:20 112:18 113:22 118:13 120:4 122:22 179:25 180:12 180:12 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 180:21 181:18 182:17 184:2,20 186:12 190:1,21 ruled 80:14 125:17 127:7 ruled 80:14 125:17 127:7 ruled 80:14 125:2 37:23 38:1 13:17 14:2,6,22 15:2 37:23 38:1 38:2,6,9,10,18 38:22,25 39:6,8 39:18,19 42:20 44:7,8,24,25 123:23 124:23 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ripe 30:4 ritual 234:13 180:21 181:18 42:11,16 124:14 125:17 127:7 ruled 80:14 125:2 37:23 38:1 38:2,6,9,10,18 38:22,25 39:6,8 39:18,19 42:20 44:7,8,24,25 123:23 124:23 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ripe 30:4 ritual 234:13	57:15 60:8	175:3 177:3	rubber 179:15	s 3.0 A.1 5.1 71.1
67:20 68:4,15 180:21 181:18 42:11,16 124:14 74:23 69:9,19,25 70:22 186:12 190:1,21 125:17 127:7 74:23 76:6 77:20 193:1,16,19 197:5 200:20 74:23 78:13,17 79:25 197:5 200:20 202:18 203:3,6 13:17 14:2,6,22 3afe 165:9 80:9,22 82:8 202:18 203:3,6 203:25 204:6 38:2,6,9,10,18 38:22,25 39:6,8 88:16 90:17 206:2,16 208:16 39:18,19 42:20 44:7,8,24,25 123:23 124:23 98:19 99:1 210:18 216:6 39:18,19 42:20 44:7,8,24,25 67:1,6,7 72:24 103:11 104:13 224:19 225:2 123:23 124:23 125:1,8,10 107:20 109:8,11 110:9 111:13,19 231:6 126:22 127:4,10 127:17 128:6,7,9 75:2,18 85:6 111:20 112:18 rings 193:18 128:13,17,18,21 ruling 11:5 67:4 74:14 85:6 206:3,4 113:22 118:13 ritual 234:13 158:19 5:25.25 149:20	62:17,18,25	179:25 180:12	rule 3:11 16:16	
69:9,19,25 70:22 182:17 184:2,20 125:17 127:7 sacramento's 71:22 74:22 186:12 190:1,21 ruled 80:14 74:23 76:6 77:20 193:1,16,19 197:5 200:20 safe 165:9 80:9,22 82:8 202:18 203:3,6 203:25 204:6 38:2,69,10,18 88:16 90:17 206:2,16 208:16 38:22,25 39:6,8 39:18,19 42:20 98:19 99:1 219:3,21 220:24 44:7,8,24,25 125:1,8,10 105:4,6 106:3,9 227:17,20,23 125:1,8,10 75:2,18 85:6 110:9 111:13,19 231:6 126:22 127:4,10 127:17 128:6,7,9 11:20 112:18 rings 193:18 128:13,17,18,21 ruling 11:5 113:22 118:13 rivuled 80:14 ruled 80:14 126:23 37:23 38:1 38:2,6,9,10,18 38:22,25 39:6,8 39:18,19 42:20 44:7,8,24,25 67:1,6,7 72:24 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 128:13,17,18,21 128:13,17,18,21 129:24 12:22 129:3,21 120:24 129:3,21 120:24 129:25 2 129:3,21 120:24 129:	67:20 68:4,15	180:21 181:18	42:11,16 124:14	
71:22 74:22 186:12 190:1,21 ruled 80:14 74:23 76:6 77:20 193:1,16,19 197:5 200:20 13:17 14:2,6,22 safe 165:9 80:9,22 82:8 202:18 203:3,6 202:18 203:3,6 15:2 37:23 38:1 114:16 88:16 90:17 206:2,16 208:16 38:22,25 39:6,8 39:18,19 42:20 115:1 97:9,25 98:5,16 210:18 216:6 39:18,19 42:20 44:7,8,24,25 115:1 105:4,6 106:3,9 227:17,20,23 125:1,8,10 126:22 127:4,10 126:22 127:4,10 127:17 128:6,7,9 73:2,7,13,15 75:2,18 85:6 111:20 112:18 rings 193:18 128:13,17,18,21 ruling 11:5 67:4 74:14 85:6 206:3,4 113:22 118:13 ritual 234:13 ritual 234:13 158:19 74:23 74:23 74:23 safe 165:9 sales 112:23 114:16 salesperson 115:1 8:19 206:2,16 208:16 39:18,19 42:20 73:2,7,13,15 75:2,18 85:6 67:1,6,7 72:24 73:2,7,13,15 75:2,18 85:6 75:2,18 85:6 76:4 74:14 85:6 206:3,4 74:23 74:23 77:223 125:1,8,10 126:22 127:4,10 <t< td=""><td>69:9,19,25 70:22</td><td>182:17 184:2,20</td><td>125:17 127:7</td><td></td></t<>	69:9,19,25 70:22	182:17 184:2,20	125:17 127:7	
76:6 77:20 193:1,16,19 rules 8:5 13:15 safe 165:9 78:13,17 79:25 202:18 203:3,6 15:2 37:23 38:1 sales 112:23 84:8,11 87:8 203:25 204:6 38:2,6,9,10,18 sales person 88:16 90:17 206:2,16 208:16 39:18,19 42:20 sales person 97:9,25 98:5,16 210:18 216:6 39:18,19 42:20 44:7,8,24,25 56:25 98:19 99:1 219:3,21 220:24 224:19 225:2 123:23 124:23 125:1,8,10 105:4,6 106:3,9 231:6 126:22 127:4,10 126:22 127:4,10 75:2,18 85:6 111:20 112:18 rights 14:22 128:13,17,18,21 206:3,4 113:22 118:13 ripe 30:4 ruling 11:5 206:3,4 120:4 122:22 ritual 234:13 158:19	71:22 74:22	186:12 190:1,21	ruled 80:14	
78:13,17 79:25 197:5 200:20 13:17 14:2,6,22 sales 112:23 80:9,22 82:8 202:18 203:3,6 15:2 37:23 38:1 114:16 84:8,11 87:8 203:25 204:6 38:2,6,9,10,18 38:22,25 39:6,8 97:9,25 98:5,16 210:18 216:6 39:18,19 42:20 44:7,8,24,25 98:19 99:1 219:3,21 220:24 44:7,8,24,25 67:1,6,7 72:24 105:4,6 106:3,9 227:17,20,23 125:1,8,10 126:22 127:4,10 75:2,18 85:6 111:20 112:18 rights 14:22 128:13,17,18,21 ritual 234:13 ruling 11:5 206:3,4 113:22 118:13 ritual 234:13 ritual 234:13 ritual 234:13 ruling 11:5 5:25.25 149:20	76:6 77:20	193:1,16,19		
80:9,22 82:8 84:8,11 87:8 88:16 90:17 97:9,25 98:5,16 98:19 99:1 105:4,6 106:3,9 107:20 109:8,11 11:20 112:18 113:22 118:13 120:4 122:22 202:18 203:3,6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 203:25 204:6 38:2,6,9,10,18 38:2,2,25 67:1,6,7,72:24 73:2,7,13,15 75:2,18 85:6 santa 66:23 67:2 67:4,74:14 85:6 206:3,4 5120:4 122:22 5120:4 122:22 5120:4 122:22 5120:4 122:23 5120:4 122:23 5120:4 122:23 5120:4 122:23 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 5120:4 122:20 512	78:13,17 79:25	197:5 200:20		
84:8,11 87:8 88:16 90:17 97:9,25 98:5,16 98:19 99:1 103:11 104:13 105:4,6 106:3,9 107:20 109:8,11 11:20 112:18 113:22 118:13 120:4 122:22 203:25 204:6 206:2,16 208:16 210:18 216:6 219:3,21 220:24 224:19 225:2 227:17,20,23 227:17,20,23 231:6 rights 14:22 rings 193:18 ripe 30:4 ritual 234:13 38:2,6,9,10,18 38:22,25 39:6,8 39:18,19 42:20 44:7,8,24,25 123:23 124:23 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ruling 11:5 158:19 salesperson 115:1 san 2:15 66:25 67:1,6,7 72:24 73:2,7,13,15 75:2,18 85:6 santa 66:23 67:2 67:4 74:14 85:6 206:3,4 sara 1:7 2:24 5:25,25 149:20				
88:16 90:17 97:9,25 98:5,16 98:19 99:1 103:11 104:13 105:4,6 106:3,9 107:20 109:8,11 110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 206:2,16 208:16 210:18 216:6 219:3,21 220:24 224:19 225:2 227:17,20,23 231:6 rights 14:22 rings 193:18 ripe 30:4 ritual 234:13 38:22,25 39:6,8 39:18,19 42:20 44:7,8,24,25 123:23 124:23 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ruling 11:5 15:1 san 2:15 66:25 67:1,6,7 72:24 73:2,7,13,15 75:2,18 85:6 santa 66:23 67:2 67:4 74:14 85:6 206:3,4 sara 1:7 2:24 5:25,25 149:20	84:8,11 87:8	203:25 204:6	38:2,6,9,10,18	
97:9,25 98:5,16 98:19 99:1 103:11 104:13 105:4,6 106:3,9 107:20 109:8,11 110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 210:18 216:6 219:3,21 220:24 224:19 225:2 227:17,20,23 231:6 rights 14:22 rings 193:18 ripe 30:4 ritual 234:13 39:18,19 42:20 44:7,8,24,25 123:23 124:23 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ruling 11:5 158:19 san 2:15 66:25 67:1,6,7 72:24 73:2,7,13,15 75:2,18 85:6 santa 66:23 67:2 67:4 74:14 85:6 206:3,4 sara 1:7 2:24 5:25,25 149:20		· ·		_
98:19 99:1 103:11 104:13 105:4,6 106:3,9 107:20 109:8,11 110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 219:3,21 220:24 224:19 225:2 227:17,20,23 231:6 rights 14:22 rings 193:18 ripe 30:4 ritual 234:13 44:7,8,24,25 123:23 124:23 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ruling 11:5 158:19 67:1,6,7 72:24 73:2,7,13,15 75:2,18 85:6 santa 66:23 67:2 67:4 74:14 85:6 206:3,4 sara 1:7 2:24 5:25,25 149:20			,	
103:11 104:13 105:4,6 106:3,9 107:20 109:8,11 110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 224:19 225:2 227:17,20,23 231:6 rights 14:22 rings 193:18 ripe 30:4 ritual 234:13 123:23 124:23 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ruling 11:5 158:19 73:2,7,13,15 75:2,18 85:6 206:3,4 sara 1:7 2:24 5:25.25 149:20		·	1 ' ' '	
105:4,6 106:3,9 107:20 109:8,11 110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 127:17,20,23 231:6 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ripe 30:4 ritual 234:13 125:1,8,10 126:22 127:4,10 127:17 128:6,7,9 128:13,17,18,21 ruling 11:5 158:19 75:2,18 85:6 santa 66:23 67:2 67:4 74:14 85:6 206:3,4 sara 1:7 2:24 5:25,25 149:20				
107:20 109:8,11 110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 rings 193:18 ripe 30:4 ritual 234:13 rings 193:18 ripe 30:4 ritual 234:13				
110:9 111:13,19 111:20 112:18 113:22 118:13 120:4 122:22 rights			′	· ·
111:20 112:18		0	· · ·	
113:22 118:13 ripe 30:4 ruling 11:5 sara 1:7 2:24 120:4 122:22 ritual 234:13 158:19				
120:4 122:22 ritual 234:13 158:19 5:25.25 149:20		-		· · · · · · · · · · · · · · · · · · ·
127:1 128:16		ritual 234:13	158:19	
	127:1 128:16			,

[satisfaction - serve]

satisfaction	174:18 176:12	96:20 104:22	send 90:20
16:24	230:23	105:11,18 117:2	159:10 224:3,11
satisfactory	scanning 74:17	118:25 119:17	225:12
65:16	74:19	122:22 129:10	senior 112:23
satisfied 57:13	schedule 23:6,7	138:7 140:20	114:16
satisfy 161:3	23:9,12 35:16	149:21 152:11	sense 73:16
210:24 222:7	school 17:24,25	153:20 154:5,16	102:16 103:1
saturday 35:4	18:3 61:25	158:4 166:2	sent 25:20 220:6
saw 54:3 59:14	74:24 156:25	173:6 176:4,9	221:7 222:8,21
158:25 176:7	scope 118:8	177:1,16 178:7	222:24 223:3,21
saying 25:20	127:6	179:13,17,21	224:12 225:6,8
28:8 33:19 36:9	scraping 91:24	181:4,13 184:10	sentence 13:11
39:15 41:17	91:24 92:4	185:14,15,17	13:20,23 233:3
42:22 43:14,14	screen 34:5	191:19 213:6	separate 36:19
43:17,19 44:4	53:21 104:24	219:10 220:24	81:9 193:21
45:7 82:23 84:5	219:8 232:11	223:19 224:22	194:7
100:9 101:17	scrutiny 58:24	228:15 231:8	separately 189:9
113:16,18 119:7	se 181:24	232:11 233:1	september
119:9 121:2	seal 236:18	seeing 50:10	219:13,24 221:7
123:1,1,6,8,10	search 108:11	181:6	221:10 223:4
123:11,15	113:11,14,17,23	seeking 178:4	sequence 85:20
133:17 136:16	searches 97:6	208:9 227:10	85:22
145:15,17,18	seattle 197:19	228:19	sequential
147:10,12	second 3:17	seen 12:9,16	232:17
148:17 149:8	75:23 78:22	32:8 42:10 43:4	series 102:17
150:9 159:23	104:15 120:15	43:21 45:7,9	219:19
161:24 162:16	121:16 135:13	53:9,17 54:8,8	serve 70:2,5 81:8
166:6 175:25	192:25	66:5 83:20	81:19 82:4,12,16
179:19,22,23	sector 29:12	115:4 177:6,15	120:16 121:5
180:2,3 188:22	security 39:4	178:11 195:7	134:11,16,21,24
189:8 192:7	213:13,19,22	219:22	135:16 143:8,15
201:4 202:4	214:10,16	sees 120:11	143:18,18,25
212:25 218:13	see 8:10 41:18	seizing 30:5	144:6,17 145:22
218:14 220:15	52:20 53:19,21	selection 155:21	149:13 152:1
221:19	53:24 54:12	self 78:10	161:2 165:19
says 10:21 42:12	58:16,18 74:22	sell 192:6 197:13	166:14 169:11
54:17 127:22,22	74:23 76:21,24	selling 199:10	169:19 179:20
150:25 154:17	90:18 91:21		180:7 186:6

[serve - sorry]

187:5,11 192:3	shift 154:8	10:14 12:15	188:6 197:17,18
194:2,9 212:6,13	shifts 19:1	128:24 130:17	197:23 210:13
230:10 231:2	shimabukuro	137:6 236:5,23	smart 122:2,4
served 13:8	138:20 141:13	simple 122:1	smothered 152:9
104:14,15 105:6	shoes 160:15	simply 14:2 69:7	snippy 113:21
196:14	shock 116:6,10	101:21 104:1	snohomish
server 100:17	short 213:8	106:11 146:10	197:17,18
137:21	shortening	146:23	198:19
serves 160:21,21	186:22	single 91:10	snow 7:21
service 1:4 3:12	shorthand 236:5	sioux 223:16	software 73:4
3:14 5:9,21	236:12	sir 17:16	185:13
17:18 83:8,21	shortly 40:10	sit 8:10 38:24	solutions 221:21
143:6 156:16	41:5,17 117:3,4	172:18	somebody 36:24
200:16 204:21	129:10,12 132:6	site 18:18,19	64:18 87:25
220:16	132:7 154:21	74:2 96:17,23	88:14 89:7,20
service's 3:20	209:25 211:7,8	97:6 99:22	168:4
4:5	shot 44:18 90:10	146:10,23	somewhat 113:1
services 116:1	show 18:16	sites 92:12 93:4	sonoma 67:1,4
set 3:17,17 11:20	154:2 228:13	93:6,24,24 94:1	85:6
12:20 101:19	232:9	94:15,19 99:20	soon 120:13
104:16,16 145:7	showing 232:20	105:24	125:20 169:23
179:9 189:25	sick 59:17	sitting 112:7	sorry 18:23
settle 170:21	side 41:6,6	situation 25:9	21:16,16 33:14
192:1	101:20 112:8	six 109:21 174:1	34:3,3 37:14
settled 67:16	159:5 167:14	191:3 205:19,20	39:5 46:13,13
190:6	215:17	sketch 17:21	53:14 61:20
settlement 66:8	sign 156:16	sky 19:19,20,23	62:21 67:2,3,3
171:1	signature 31:7	32:20 35:24	70:23 72:20
shadow 117:17	31:22,25 234:25	36:5,14,16 40:1	73:11,11,11 74:9
117:22	236:22	49:21 60:9 62:3	75:8 78:19,21
shaking 112:10	signatures	62:16 107:8,13	79:16 82:19
share 53:13,21	168:22	107:14,15	83:16 96:11
104:18	signed 3:21	156:15 157:8	108:13 111:24
she'll 149:21	71:10	slower 106:15,16	114:1 117:8
shepherd 168:2	similar 7:3,6	slowly 214:21	120:18 129:15
207:25	68:9 162:4	small 56:6,8	130:17 138:22
sheriff 18:10	simmons 1:25	67:10 88:19	148:14 160:5
	2:7 5:16 9:5	90:25 187:12,18	164:5,23 169:21
		I .	

[sorry - statement]

	speculation	stand 160:15	94:11,14 95:4
172:17,18 188:20 204:9	122:20 123:4	190:8	99:4,8 100:4,17
212:8 214:18,20	137:2 144:11	standard 123:18	101:1 103:3,5
218:16 223:10	230:5	126:13,19	107:18 109:15
sort 82:23	spell 70:25	127:13,25 128:1	117:21 118:3
sorted 133:14	spend 11:17	128:15 148:3,7	121:3 122:12
sought 89:10	spider 108:13,19	standing 28:23	123:15 129:11
sound 98:2	108:24 146:2,9	standpoint 20:16	129:21,22
172:7	147:1	95:9 213:20	130:22 131:14
sounds 49:2 61:4	spidering 138:22	231:11	131:22 132:1,20
61:17 68:1 80:3	spiders 108:23	stands 112:2	134:8,10 135:4
98:11 137:12	109:3 141:20,20	stanislaus 67:14	136:12 148:21
149:3 193:4,6,16	142:1	stars 52:5	148:22,25 151:1
source 197:16	split 113:13	start 65:20 72:18	158:11 159:22
south 69:19 71:9	spokane 59:21	109:12 157:23	160:1,3,6,6
139:9 141:23	spoken 110:24	174:11	163:3 166:13
220:15 221:1,16	spot 230:18	started 20:23	168:13 185:1,22
221:17 222:5	spreadsheet	21:25 30:14	187:7,21 188:3,4
223:16	171:13 173:19	85:8 207:17	189:21 190:22
speaking 126:4,7	175:7 178:16	234:13	192:10 194:1
specialist 183:4	180:13 182:18	starting 48:25	195:1,14 197:14
specific 20:16	183:4	65:10	198:7,14,17,22
38:23 39:21	spreadsheets	state 2:8 5:18	201:8 207:17
40:17 59:9	182:25 183:1	6:15 26:12	209:5 210:9
75:14 86:18	184:8	35:25 37:11,13	211:20 212:5
199:23 203:7	st 35:19	38:18 39:24	213:11,12,13
209:17	stacks 157:14	40:7,12,25 41:3	214:11,15,22
specifically	staff 87:19 216:2	41:6 42:8,12,19	215:9 216:9,19
12:20 23:6 30:1	216:17	42:20 43:1,4,6	216:20 217:3,14
36:11 40:20	stale 156:2	43:10,12 45:2	220:25 221:15
46:9 47:3 50:20	stamp 30:25	51:4 58:2 60:9	222:5 223:15
50:22 87:18	117:17,22,22	61:19 63:6,11,19	229:11,20,22
118:9 129:5	168:25 186:11	63:19 64:21	235:2 236:2,6,24
170:13 200:5	stamped 24:2,24	65:1,3 69:18	stated 14:2,2
202:10 204:25	30:7 117:8,11,15	71:18 72:18	124:4
specifics 26:20	118:6	77:11 79:3,20,22	statement 106:3
speculate 194:11	stamping 117:16	81:14 83:6 89:3	114:4 127:12,12
		89:5 92:16 94:7	135:17 200:20

[statement - suite]

220:8 221:19	stipulation 57:5	132:24 133:1,3	202:10 203:8
233:12	stipulations 5:19	142:22 143:4,10	subpoena 110:21
states 1:1 42:11	stop 32:4 100:24	143:11 145:21	110:25 111:4,18
64:20 77:17,19	100:25 101:3	166:19 169:15	112:20
106:7 138:21	103:7 139:19	186:5	subscribe 75:13
139:10,24	140:8 174:21	submissions	subscribed
141:19 148:11	202:20 212:2	122:16	235:21
148:14,14,16	stopped 100:11	submit 36:18	subscriber 75:14
188:23 189:1	141:19,20	145:14 148:2	107:12
194:4 204:16	142:10 146:3	170:23 234:2	subscribers
stateside 86:9	stopping 141:25	submits 80:24	32:21 36:23
statewide 68:21	straight 33:20	submitted 36:5	62:15 107:8
69:3 70:12,12,22	straightforward	36:13 42:3,5,8	151:17 156:14
70:23 71:12,25	25:7	42:13,17,20	156:15 157:9
72:8,14 73:1	street 2:20	43:12,15,18,25	subscribing
82:12,16 83:7	strength 164:10	44:5,9,20 45:2	61:18,22 62:3,6
86:2 91:18	164:14 208:7	90:8,16 120:9,13	subscription
148:17 190:6,11	strike 13:20	120:16 121:1,4	61:8,11 62:12,20
190:20 192:2	57:20 107:23	121:13,16,24	62:22,24 74:7
197:24 198:4	109:13 110:16	122:6,9,11 123:2	189:4,12,17,21
199:3,7	119:20 122:9	123:9,11,16	201:7 204:20
stating 25:12	134:20 160:24	124:15 126:16	subsequently
station 61:25	229:21	128:8 133:5,18	189:22
statistics 184:21	strokes 56:23	134:1,4,7,8,9,23	substantial
184:21	strongly 10:17	142:18,21	202:2
statute 125:18	structure 201:13	143:25 144:6,17	substantiated
stay 33:13 50:15	structured 231:5	149:7,9 151:25	196:10,11
51:1,11 91:17	stuck 158:20	161:1 166:14	substantively
stays 228:1	stuff 61:15 157:2	169:24 170:9	11:2
step 162:9	157:17 168:22	173:10 179:19	substitution
171:21 179:11	style 48:16,19	179:24 180:6	59:15
193:24	49:14,25	201:16 202:11	successful 89:2
steps 152:22	subject 58:24,25	203:8 204:2	sufficient 211:25
sterilization 57.4	105:19 154:18	207:7 212:6,7,13	suggested 99:5
57:4	190:14 195:24	228:11,17 231:1	suit 7:3 96:12,24
stick 11:18 91:14	subjects 218:7 submission	233:8	211:22
92:16	42:23 124:6	submitting 45:8 133:24 201:3,15	suite 2:20
	42.23 124.0	133.24 201.3,13	

[suits - talk]

suits 7:6	94:14 97:14	109:17 194:1,23	t
sum 114:15	98:3 99:11	sworn 6:6 9:17	_
summarize	101:3,4 102:25	10:6 15:9	t 3:2,9 4:1 59:12
87:10	106:19 108:8	208:15 209:19	115:18
summary 49:23	109:2 111:2	235:5,21 236:9	tacoma 76:9 199:12
128:23 151:14	124:3 127:14,16	system 73:1,2,6	tactic 192:5
sunday 35:4	130:8,24 143:3	73:16 77:7 83:7	take 8:12,14
superior 76:10	144:22 146:20	83:10 84:9,24	10:3 12:1 30:23
supplement	147:8,15,21,22	86:22 99:15	30:24 33:14
11:14	151:19 157:3	113:12 129:20	45:15 68:13,14
supplemental	158:12 165:1,10	133:21 135:7	91:19 98:1,8,9
4:4 46:20	168:1 169:4	136:11,21,24	99:2 102:6
228:11	170:20 176:6	137:18,25	103:1 130:22
support 3:19 4:4	177:8 183:2,24	143:12,16,23	138:7 140:15
164:10 173:10	184:1,13 185:10	144:3 145:1,5,7	151:13,14
supports 44:8	187:25 190:17	149:1,16 150:4	168:25 169:14
45:1	198:11,11	157:11 163:4,20	169:18,23
supposed 28:17	199:12 208:8	163:25 164:3,14	170:18,19
supreme 38:7,18	209:2 220:17,19	164:23 165:3,19	171:22 174:23
38:25 69:17	227:14 230:15	165:22 166:15	176:11 178:1
188:19 198:11	231:7	166:23 167:2,9	202:23,24
203:17 204:2	surmised 59:20	167:12 179:18	207:15 208:10
205:2	suspect 194:9	184:6 188:2	210:13 216:9,10
sure 7:14,16	suspected 62:8	192:4 194:4,6,16	219:4 220:10
10:4,19 11:8	sutter 67:14	194:23 199:4,7	227:12 234:12
18:17 21:9,18	swear 6:3	210:9 212:14	taken 2:4 5:8
31:18 41:15	sweep 95:11,13	213:3 229:24	39:14 45:19
47:5 49:5,25	95:13 96:17	230:2,8,10,24	98:15 138:12
52:6,6 59:12	sweeps 92:18	231:3 233:9	141:1 203:2
60:25 61:16	93:4,22 94:2,12	system's 195:2	205:1 207:16
65:8,21 66:20	95:6 105:22	systems 34:22	208:11 210:17
67:11 68:12	swept 97:4	64:24 71:2	227:19 235:8
72:6,9 76:18	swim 234:12,14	78:19 82:14	236:11
77:24 79:18	swing 76:16 77:9	83:2 145:8	takes 102:7
80:11 81:18	switch 148:19	148:24 171:5	129:19 183:4
84:15 86:12	194:3	186:2	talk 17:9 28:22
87:12,20 88:4	switched 84:12		32:16 45:24
90:12 92:6	84:23 85:11,24		48:1 50:24 51:5

[talk - thing]

52.0.60.24	1600 176 16	4 77 10	117 20 120 15
53:9 60:24	163:9 176:16	tennessee 77:18	117:20 120:15
98:22 102:21	197:2 208:4	139:9	120:20,22,22,24
138:18 173:17	219:2	term 29:24	124:9,11 125:4
192:24 198:2	tangential	41:24 120:1	125:13 126:17
201:3,13 204:7,8	111:22	121:20 133:9	127:2 128:13,18
205:15	target 103:12	150:21	129:21 140:10
talked 18:13	tasked 18:14	terminations	186:5 188:13
26:17 46:1	technologies	87:4	200:18 201:10
51:10 59:4	72:21 73:24	terminology	201:23 204:11
60:10 77:17	74:6 75:7,10	81:2	208:15 209:19
98:23 110:7,17	114:11	terms 124:21	224:7 231:21,23
112:24 115:5	technology	155:7 160:10	texas 71:9 78:17
134:14 138:20	91:24 112:3	178:23	82:10,11 85:10
142:17 148:1,2	208:12,22 210:3	terrible 172:18	108:10 112:1
155:10 159:7	tecum 3:14	territory 67:19	113:12 115:12
171:9 172:25	teed 11:21	terry 112:6,12	139:9 141:24
173:13 175:12	telephone 2:16	115:18,19,23	190:20 221:25
175:18 196:25	2:21	test 10:3 155:17	text 136:4
198:1 200:25	tell 6:6 22:16	testers 73:3	181:13
201:11,12,20	23:24 24:13,21	testified 6:7	thank 30:23
205:17,23	25:1 26:22	23:12 27:1,13	32:15 34:8
210:23 211:18	30:11 37:11	28:21 30:1	45:11 62:12
213:4 215:7,19	39:7 40:5 46:4	48:17 60:2	98:12 103:10
215:20 216:19	49:10 58:21	114:13 142:9	108:16 140:23
217:17,18 219:3	80:9 100:6	156:1 181:8	142:11 155:14
225:9	101:14 113:6	186:10 205:3,5	172:8 173:5
talking 7:4 15:6	139:5 144:20	209:3,9 210:1,8	186:22 231:10
23:18 25:25	161:7 181:3	211:4,6 214:25	233:18 234:10
27:18 32:8	183:10,15	215:1	thanks 45:16
37:17 39:22	205:25 234:11	testify 21:5 47:9	57:16 78:7
53:22 57:14,21	telling 25:17	47:20,22 125:16	104:6 105:3
61:3 62:23	178:21 189:19	204:9,12,13	140:19
79:23 84:15	tells 43:21 45:10	236:9	theory 121:3
105:7,15 107:4,7	ten 45:15 73:2	testimony 9:17	thereof 235:11
108:17 110:21	77:4,4 93:25	10:14 11:7 24:5	thick 212:21
118:9 136:6	141:17 210:14	27:4 30:1 32:23	thing 16:9 21:17
149:7 154:13	tend 50:13	37:19 44:2	43:13 52:5
159:18 160:10		47:18 48:24	53:22 57:12

[thing - time]

82:3,9 97:13 103:11 108:12 215:23 103:22 130:6 110:8,19 111:19 216:13 139:21 149:9,22 111:20 112:23 217:15 151:14 224:24 113:5 114:4,19 220:5,7 224:25 115:16,24 116:1 225:17	19:7,8 20:10 218:12 21:21,22 22:5 223:16 222 26:1,6 28:2,4,15 227:13 28:22 30:22
103:22 130:6 110:8,19 111:19 216:13 139:21 149:9,22 111:20 112:23 217:15 151:14 224:24 113:5 114:4,19 220:5,7 224:25 115:16,24 116:1 225:17	19:7,8 20:10 218:12 21:21,22 22:5 223:16 222 26:1,6 28:2,4,15 227:13 28:22 30:22
139:21 149:9,22 111:20 112:23 217:15 151:14 224:24 113:5 114:4,19 220:5,7 224:25 115:16,24 116:1 225:17	218:12 21:21,22 22:5 223:16 23:19 25:12 ,22 26:1,6 28:2,4,15 227:13 28:22 30:22
151:14 224:24 113:5 114:4,19 220:5,7 224:25 115:16,24 116:1 225:17	223:16 23:19 25:12 222 26:1,6 28:2,4,15 227:13 28:22 30:22
224:25 115:16,24 116:1 225:17	22 26:1,6 28:2,4,15 227:13 28:22 30:22
	227:13 28:22 30:22
things 33:19 116:4.20 118:13 226:15	
	230:1 32:24 35:11,23
50:17 51:2 119:12 120:12 229:4 2	l l
56:21 61:13 122:3 124:22 231:13	38:17 40:10
85:25 116:4 125:5 127:10,19 thinking	
150:25 163:8 127:20,20 77:10 9	,
183:8 185:21	08:7 70:15 73:5
186:1 225:19 143:18 144:13 109:21	110:25 89:19 91:19
think 7:9,9,13 144:21 145:24 third 11	10:21 93:17 98:5,6,13
10:15 12:2,4,4 147:4,8,21 176:12	179:1 98:17 101:8,12
14:1,12 17:4,6 151:11 152:6,11 thomson	187:16 102:11 104:14
17:13 19:6 152:13 153:12 thought	17:2 107:21,24 108:4
20:20 21:2 24:6 153:14,22 155:5 28:6 52	2:6 90:19 110:15,17 111:3
24:17 28:12 155:11 156:21 113:16	150:20 114:19 117:22
30:5 32:13 34:6 158:6 159:16 157:16	118:8,24 122:8
35:13,20,21 38:4 160:19 161:21 thrall 2	08:12 122:23 123:6,10
38:9 39:3 41:1,3 162:13 164:3,4 threaten	165:12 123:12,17 129:9
42:10,18 46:18 166:7 167:13,25 threaten	ed 129:12,17,18
48:5 49:1,1 171:22 175:24 152:9	131:3,12 132:25
51:12,24,25 176:3,9,24 three 2:	15 40:12 138:10,14
53:18 54:2,3 177:18 178:3 47:13 6	56:3 70:4 140:24 141:3
58:22 59:1 180:20,22 181:8 70:8 11	4:7,15 145:12,21
60:22 61:20 181:25 182:10 176:9,2	23,24 150:15 152:4,17
67:19 69:25 185:6,11 186:10 184:2 1	91:4 153:9 154:25
70:20 71:1,7	201:12 163:14 166:2,10
72:8 75:16,21,22 189:7 190:1,10 204:16	231:14 166:10,13,18,19
75:23 77:14,15 190:13 191:4,11 throw 1	92:4 168:16 175:22
81:2,6,17 83:13 191:24 193:2,13 thumbna	il 17:21 177:19 179:6,8
83:19 86:6,13 194:3,8 195:10 tidying	229:10 191:18 202:25
88:2,17,18,20,21 195:12 200:21 tied 53:	19 87:18 203:4 209:17,25
88:22,23 90:9 200:22 205:10 tigera 1	87:14 210:19 221:14
91:7 93:19,21 205:16 207:13 188:1	224:16 227:18
94:5,6,18 99:12 211:6 212:1	227:21 231:7

[time - tyler]

234:18,22	toes 80:23	traffic 183:14	try 8:12 31:16
236:12	told 24:23 25:5,8	transcribed	32:5 33:9 60:23
timed 88:23	100:22	10:14	64:23 102:23
timeliness 32:19	tomorrow	transcript 10:12	105:1 119:17
39:25 40:3	194:12 231:8	11:1 15:1 16:6	130:15 148:19
timely 32:17	tons 187:18	218:11,15	185:20
40:6,24 41:8,13	top 3:23 50:1,3	236:14	trying 7:9 27:16
52:10 109:16,24	72:18 81:24	transfer 143:14	32:5 41:15 48:5
132:1,3,6	82:3 99:7,25	165:18 212:14	75:21 76:16
times 31:5,19	206:1 232:24	213:2 230:14	88:17 89:1 91:7
38:1 77:4,4	topic 36:25	transferred	91:21 94:4
120:25 121:24	102:14,22 124:6	145:1 150:3	95:25 121:15,21
126:12 133:17	124:23 127:11	166:15 167:2	122:2,3 125:19
201:12	topics 47:10,19	169:20 230:8	137:11 156:14
timing 166:1	47:23 48:4,6	transition 84:3	165:16 183:3
183:16	125:19 127:7	85:21	185:19 192:6
title 141:12	158:25	transitioning	200:4 204:24
titles 206:10	tort 50:4	87:5	217:15 224:9
today 6:1,13,20	total 62:15	transitions	turn 107:20
7:4,15 8:2 9:13	114:15 205:18	144:2	149:24 188:9
10:6,9,20,21	touch 50:16	transparency	193:19 219:1
11:4,9,19,23	51:11,19	152:6	turned 112:12
12:3 14:5,7,10	tough 159:1	tread 178:19	tv 61:25 156:6
14:24 15:9,12,17	town 197:17,18	treading 80:23	twice 35:25
15:23 17:7	track 7:12	tried 49:6 161:7	two 61:2 64:23
28:24 29:19	115:22 163:7	trouble 136:15	101:9 114:7
38:24 46:5 49:8	174:13	true 86:9 101:10	156:12 159:1
104:13 105:6	tracking 173:24	120:3 151:1,1	176:23 178:22
125:2 128:14,19	173:25 174:7,8	227:6,8,11 229:1	183:25 185:13
153:23 154:4,14	174:11	235:14 236:14	191:4 198:6
161:22 186:5	tracy 115:14	truly 162:2	199:17 206:4,15
196:15 208:5	tradition 72:13	trust 57:12	206:20,20 207:2
209:20 218:7	209:7	trustworthy	221:21 231:13
228:1 231:7,19	traditional 83:2	20:8	tyler 65:24 66:10
234:13	156:4 207:15,23	truth 6:6,7,7	66:14,14,17
today's 5:4	208:11,18,25	236:10,10,10	67:25 68:4 70:1
10:23 47:2,10	209:16,23,24	truthful 10:9,25	70:5 71:11
219:4		15:12 16:2	75:16 78:9 81:5
	1	1	1

[tyler - universality]

01.16.01.05.00.0	207 10 212 12		125 10 157 10
81:16,21,25 82:3	207:10 212:13	u	135:18 157:10
82:4,6,9,11,14	215:13,25	u 59:12	166:21 180:4
82:17,18,20 83:8	216:11,16 217:1	u.s. 40:13 50:16	193:23 209:3
85:1,9,12,13,17	217:6,12,17,24	51:1,5,11,19,23	211:14 215:20
107:22,25	218:5,19 219:9	84:4 86:8	217:8 219:22,23
108:10 109:12	219:23 221:18	157:15 159:8	229:12 230:20
109:25 110:1,7	222:15 223:22	160:8 164:7,8	understanding
110:16,18,25	224:10,13 225:7	ultimately 44:13	15:18 16:12
111:5,15 112:19	226:1,12 230:10	80:21 89:1	19:22 22:16
113:12,14	231:1	103:16 150:2	24:20 37:4
114:10,20 115:1	tyler's 81:18	152:11	39:18 42:24
115:4,6,8,25	108:1,5 116:23	umbrage 113:20	43:1,11 47:17
118:1 134:11,14	120:16 121:5	undelayed	48:23 52:8,23
134:16,19,21,23	137:4,24 143:12	154:20	55:4 117:13
135:5,8,12,15	143:15,17 144:6	undergrad 18:1	120:1 122:12
136:20,24 137:3	150:1,17 169:10	underlying	131:11 133:10
137:15,16 138:1	194:11 215:20	136:22 137:20	134:22 142:18
143:7,18,25	216:10,11,21,23	underpinnings	143:24 144:14
144:17 145:4,7,8	222:7 224:3	148:6	173:18 181:12
145:21 151:8,11	type 16:9 52:5	understand 8:18	186:13 192:18
151:12,25 161:1	54:23 57:12	9:2,12,15,23,24	193:20 203:13
162:4 166:14	59:18 91:23	10:2,8 13:22	212:4 215:11
169:18 170:2	96:9 103:22	15:11,22 16:5,10	219:12 224:15
179:20 180:6	105:12 114:25	16:19 26:25	230:7,25 233:23
187:1,15,15	116:17 155:19	28:18 31:15	234:5
188:9,10,16,22	159:14,17	33:23 40:5,19	understood 8:21
188:25 189:5,12	180:19 213:18	47:5,7 48:3 51:9	25:9 28:12
189:19 190:3,9	typed 106:17	51:16 55:21	59:24 136:19
190:12,21	types 49:17,23	57:20,21 58:19	160:22 233:7
192:15 193:5,22	51:2 52:22,24	59:16 61:16	undertake
197:12,16	56:21 58:5 96:8	71:11 81:11	153:18
198:16 199:16	229:23	83:25 88:8 96:1	undisturbed
200:11,15,23	typewriting	96:13 101:16	165:7
201:2,3,6,12,17	236:13	102:23 107:15	uniform 149:1
201:17 202:12	typically 24:25	114:8 116:23	unique 52:18
202:13 203:10	34:15 129:18	118:4 119:9,13	united 1:1 42:11
203:10 204:15	154:19 155:1	120:15 126:19	universality
204:20 206:8		130:3,19 135:16	82:15
		130.3,17 133.10	

[universe - voluntary]

185:20 207:12 unreasonable	vague 26:18,19 29:24 31:12	valued 89:14	
unreasonable		valueu 03.14	172:13 234:20
02222 0000 022000 20	39:16,17 41:23	variation 194:8	videoconference
176:2	53:3 55:7 58:10	variations 74:18	2:5
unsolicited	65:4 89:11	162:5 170:15	videographer
219:17	92:20 103:23	185:18	2:24 5:3 6:2
unusual 182:6,8	118:7 119:3,23	varied 77:25	12:25 13:3
updated 49:3	121:8,19 122:18	157:6	45:17,20 98:13
updating 185:12	123:3 124:17	varies 146:15	98:16 138:10,13
upholding	130:1,10 132:2	various 3:21	140:24 141:2
163:24 164:13	132:13 133:10	46:8 56:25,25	172:15 202:25
use 13:16 29:25	135:9 142:24	61:7 87:17	203:3 210:15,18
37:7,14,25 64:3	144:9 147:5	186:14 212:19	227:17,20
77:1 81:2 91:14	161:5 164:19	vary 179:10	234:19
95:18 96:9	165:23 168:15	vegas 66:10	videotaped 1:13
106:9,13,14	185:20 189:13	194:22	2:1,3 5:7,12,14
108:5 116:14	194:17 195:4,21	vehicle 143:19	view 91:11 155:4
142:1 155:18,18	207:19 208:23	vendor 71:24	161:19 196:4
162:1 173:19,25	210:5 211:2	84:7,14 135:4	viewable 173:3
175:13 176:19	229:13 230:4,11	142:22 143:4	vigorously
	valenti 19:14,15	149:13	112:10 116:6
189:21 214:5	21:25 23:11	vendors 66:1,4	violating 185:15
217:14	27:1 32:24	67:22 70:6,6	185:17
uses 92:11 93:3	34:25 36:5,15	84:13 187:10	violation 155:20
103:17 106:21	48:17 49:13	ventura 74:14	virginia 79:2,3
148:25 182:25	59:8 60:2 64:3	verbatim 236:15	79:15,25 139:9
usual 170:15	89:6 102:6	verification	virtual 118:16
usually 96:10	106:21 147:2,13	235:1	119:8
178:12 180:24	167:4 171:9	veritext 2:6 5:17	virtually 69:20
234:12	173:19 174:5,10	vermont 68:20	visual 184:20,22
utah 76:1 188:2	181:4 186:8	78:22 81:17	184:22
utilize 216:21	208:20 209:3,14	83:15 84:25	visually 184:9
utmost 163:20	210:1,7	194:1	voice 112:24
v	valenti's 21:14	versus 42:17	volume 102:16
v 1:6	24:5 27:7 48:24	113:9 118:10	voluntarily
vacation 59:17	59:24 146:5,12	124:6,16 128:8	69:17 87:15
	172:25	179:3	voluntary 73:8,9
			74:8,9 78:6

[vs - witness]

vs 5:9	washington 76:9	220:21 221:12	window 156:17
W	102:9,10 141:21	web 86:25	158:3,3
wait 211:8	196:20 197:7,13	website 109:8	wine 227:15
waiting 166:9	198:8,22 199:18	websites 92:24	wisconsin
waived 14:11	215:3	93:17 101:17	139:10
waiver 234:8	waste 11:24	webster's 133:14	wise 103:5
waiving 13:24	watch 156:6	wednesday 2:8	196:25 211:20
105:19 154:18	watched 8:9	week 70:13	212:12
wake 7:20	water 172:7	80:12 153:16	withdraw 12:6
walk 31:1 168:6	way 28:11 43:7	weekend 33:3	withholding
want 12:15	44:19 52:16	34:15 176:15	212:2
14:15 17:7	54:20 72:3	weekends 33:1	witness 6:3,6
29:10 33:16	81:12,16,24 82:9	34:14 35:7	27:5 31:14 42:2
51:21 59:11	85:3 94:8	157:24 158:5	43:4 44:4,16,19
63:1,9 65:8	104:10 109:25	176:17 177:22	45:6,16 47:7
66:14 68:10	110:10 117:10	weeks 194:3	53:5 55:12
89:20 94:7 97:7	117:14 125:10	welcome 62:13	58:13 65:11
98:1 99:24	145:2 149:4,23	62:14	89:13 92:5,23
100:10,23 101:4	150:21 153:14	went 17:23 18:3	98:3 103:25
102:14,22 108:9	157:7 161:2,24	22:6 23:5 24:14	110:6 118:12
110:23 116:18	164:25 166:9	27:9,11,22 28:17	119:6 120:2,21
118:23 119:2	170:14 177:25	73:3 85:15	121:12 122:22
155:17 159:9	178:8 179:1,6	151:10 172:15	123:6 124:22
165:14 167:10	184:9 230:7	185:22	125:5 126:12
169:16 173:17	ways 161:25	west 2:20 71:21	127:9 129:4
175:10,10,13,23	178:22	158:8	130:3,15,19
178:19 189:15	we've 11:8 18:13	whatnot 163:11	132:5,17 135:12
200:7,9,13	34:9 57:22	wheels 103:2,13	137:3,8,10
202:17 218:3	80:13 93:6	wide 72:23	139:14 140:12
220:3 222:25	97:25 105:15	wifi 75:4	143:1 144:12,19
225:16 232:9	110:6 115:4	wild 77:1	147:7,22 161:7
234:11	141:19 142:17	william 1:13 2:1	164:21 166:1
wanted 58:1	166:25 174:1	2:4 3:4,19 4:4	189:15 190:8
116:14,15	175:18 180:10	5:7 6:5,17	194:19 195:7,24
wanting 157:9	186:18 205:10	234:20 235:5,19	200:19 201:11
wants 131:25	207:7 208:4	willing 174:23	207:22 208:25
170:10	210:11,12	197:10,22	211:4 218:16
	215:19 218:23	198:13,16	223:10 227:16
		· ·	

[witness - yep]

229:17 230:13	98:6 101:21	30:5 31:14 33:8	174:4,9,13,16
231:10,15	105:22 106:12	34:8 37:3 41:1	176:17 180:17
233:18 234:11	106:24 156:20	44:4 46:17 47:3	180:20,21 182:3
235:7 236:8,18	177:22	47:15,15 49:5,10	182:3,14,20
witnesses 147:18	worked 18:5	53:23 54:2,10	183:18 184:4
147:24	21:7 22:13	57:16 58:13	186:15 187:15
wondered	30:18	59:19 61:24	188:3 189:10,15
230:18	workers 56:14	64:10,25 65:11	190:4 191:7
wonderful 33:25	working 101:23	65:20 66:16	193:1,16 194:14
word 29:13 30:5	114:22 142:10	67:1,8 68:8,10	196:10 199:12
93:7 116:15	166:3 183:5	71:5,19,21 75:24	200:9 201:22
119:24 133:23	workload 87:25	75:25,25 76:21	206:18 212:10
134:4 137:19	works 29:4 98:7	78:1,21,21,25	212:17 213:4
145:23,24 149:7	worries 71:23	79:5 80:1 82:22	215:4 217:22
149:7 155:17	worry 196:11	82:22 83:17	219:16 221:16
158:18,21 162:2	worth 153:14	84:1,1 85:19	221:17,25 222:9
168:11 175:14	worthwhile 91:3	86:6,20 94:23,23	223:19 230:13
204:23 213:4	write 123:13	95:7 96:19	231:24
232:3 233:15	162:11 182:23	97:11 100:7	year 72:9 109:19
words 22:22	written 21:20	101:17 102:12	185:25 190:2
23:5 24:1 25:19	113:8	105:5 108:24	192:19 197:13
37:17 65:12	wrong 10:16	110:6,8 115:3,3	197:22 206:15
80:24 90:18	27:23 31:8,22	115:3,13,20	years 17:20
95:17 96:4	175:13 212:9	117:3,16 118:14	37:20 58:17
100:9 108:20	wrongly 227:24	119:15 122:6	73:2,17 93:25
109:2 116:22	wrote 174:25	124:22 129:4,14	101:9 109:21
122:1 145:8	208:13 220:14	132:5 135:12	111:25 112:22
158:2 160:5	ws 137:21	136:14 137:8	114:7 115:11,17
161:21 166:3	wyoming 20:4	139:1 140:12	115:22 141:17
167:15 170:21	34:19 35:17	142:5 143:4	163:17 174:1
174:25 180:19	62:16 77:18	145:2 146:17	206:15
188:24 211:11	X	147:7 153:11	yellow 175:22
216:15	x 3:1,2,9 4:1	154:6,15,17	183:13,20
work 20:21		155:15 158:25	184:14,17,19,25
32:25 33:4,14	y 7 10 2 4	160:15 163:13	yep 30:23 69:22
34:9,13 35:7	yeah 7:19,24	164:2 165:11	69:22 158:22
60:5 85:25 87:7	17:1,8,8,25 18:1	167:13,14 171:8	168:20 171:15
87:10,25 88:13	18:1 27:5,15	171:8 173:8	
L	1		<u> </u>

William L Girdner November 9, 2022

[yeses - zoom]

yeses 218:12 yesterday 19:10 20:1,11 23:13 27:1,14 48:17 49:6 50:6 59:14 173:1 181:8 208:20 216:25 yesterday's 8:8 37:19 **yield** 178:23 **yolo** 67:14 york 69:3,16 78:21 83:14,16 84:16 89:23 177:20 **yuba** 67:14

Z

zero 77:1 176:7 178:12 zone 35:23 zones 35:11 zoom 149:23 Idaho Rules of Civil
Procedure

Rule

- (e) Review by the Witness; Changes.
- (1) Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. (2) Changes indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30 (f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period. (3) Witness Failure to Sign. (A) In General, If the deposition is not signed by the witness within the 30-day period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence

of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) Use of Unsigned Deposition. The deposition may be used as if it were signed, unless pursuant to Rule 32

(d) (4) the court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE STATE RULES

OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

Case 1:21-cv-00305-DCN Document 60-7 Filed 12/15/22 Page 118 of 118

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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Exhibit E

ER-1798

(121 of 297), Page 121 of 2**97** ase: 24-6697, 03/06/2025, DktEntry: 10.9, Page 121 of 297 Case 1:21-cv-00305-DCN Document 60-8 Filed 12/15/22 Page 2 of 79

Catherine Valenti November 8, 2022

1	IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO		
2	FOR THE DIST	RICT OF IDAHO	
4	COURTHOUSE NEWS SERVICE,) Case No.) 1:21-CV-00305-DCN	
5	Plaintiff,	,	
J	T TATHETT ,)	
6	V.)	
)	
7	SARA OMUNDSON, in her)	
	official capacity as)	
8	Administrative Director of)	
	Idaho Courts,)	
9)	
	Defendant.)	
10)	
11			
12			
13	REMOTE VIDEOTAPED DEPOSI	TION OF CATHERINE VALENTI	
14	NOVEMBE:	R 8, 2022	
15			
16			
17			
18			
19			
20			
21			
22	Reported By: Amy E. Simmons,	CSR No. 685, RPR, CRR, CRC	
23			
24			
25			
		n 1	
		Page 1	

Catherine Valenti November 8, 2022

```
REMOTE VIDEOTAPED DEPOSITION OF CATHERINE VALENTI
                                                                                PROCEEDINGS
                                                                   2
     BE IT REMEMBERED that the remote videotaped
                                                                   3
                                                                           THE VIDEOGRAPHER: So we are recording,
4 deposition of CATHERINE VALENTI was taken via
 5 videoconference by the attorney for the Defendant before
                                                                   4 and we are on the record. Today's date is
 6 Associated Reporting & Video, a Veritext Company, Amy E.
                                                                   5 November 8th, 2022. The time is 1:12 p.m.
 7 Simmons, a Court Reporter and Notary Public in and for
 8 the County of Ada, State of Idaho, on Tuesday, the 8th
                                                                            For the record, this is the remote
 9 day of November, 2022, commencing at the hour of
                                                                     videotaped deposition of Cathy Valenti taken by
10 1:12 p.m. in the above-entitled matter.
                                                                   8 the Defendants in the matter of Courthouse News
12
                                                                     Services vs. Omundson. It's Case No.
13 APPEARANCES (remotely):
                                                                  10 1:21-CV-00305-DCN. It is in the District Court
14 For the Plaintiff: BRYAN CAVE LEIGHTON PAISNER
                                                                     for the District of Idaho.
             By: Jonathan G. Fetterly, Esq.
             Three Embarcadero Center, 7th Floor
                                                                  12
                                                                           The videotaped deposition is being held
             San Francisco, CA 94111-4070
                                                                  13 remotely via Zoom videoconference. The videotaped
16
             Telephone: (415) 675-3400
                                                                  14 deposition is being recorded by Chris Ennis and
             Facsimile: (415) 675-3434
17
             jon.fetterly@bclplaw.com
                                                                  15 reported by Amy Simmons of Associated Reporting &
18
                                                                  16 Video, a Veritext company.
   For the Defendant: DUKE EVETT, PLLC
19
             By: Keely E. Duke, Esq.
                                                                  17
                                                                            And if counsel will please state their
                Molly E. Mitchell, Esq.
                                                                  18 appearances and any stipulations for the record.
20
              1087 West River Street, Suite 300
                                                                  19
                                                                           MR. FETTERLY: This is Jon Fetterly with
             Post Office Box 7387
21
             Boise, ID 83707
                                                                 20 Bryan Cave Leighton Paisner for the Plaintiff,
             Telephone: (208) 342-3310
                                                                 21 Courthouse News Service, representing Ms. Valenti.
22
             Facsimile: (208) 342-3299
                                                                 22
                                                                           MS. DUKE: Keely Duke and Molly Mitchell
             ked@dukeevett.com
             mem@dukeevett.com
                                                                 23 on behalf of Ms. Omundson.
24 Also Present:
                 Chris Ennis, Videographer
                                                                 24
                                                                           And I also have Ms. Omundson here today
             Sara Omundson
                                                                 25 in the room.
25
              William Girdner
                                                                                                                           Page 4
                                                         Page 2
                INDEX
                                                                           MR. FETTERLY: And for Courthouse News --
             EXAMINATION
 2
                                                                   2 this is Jon Fetterly speaking. We also have
 4 CATHERINE VALENTI
                                              PAGE
                                                                     Mr. Girdner in the room, Mr. William Girdner.
5
                                                                           THE VIDEOGRAPHER: And if the court
    By: Ms. Duke......5, 161
                                                                     reporter will please swear the witness.
 6
      Mr. Fetterly......157
                                                                                  CATHERINE VALENTI,
8
 9
                                                                     a witness having been first duly sworn to tell the truth,
               EXHIBITS
                                                                   9 the whole truth, and nothing but the truth, testified as
10
                                   PAGE
                                                                  10 follows:
   NO.
11
                                                                  11
   Exhibit 20 Big Sky Report Dated 10/11/22 (4 pages)
                                                                                   EXAMINATION
                                                                  12
12
   Exhibit 21 CNS Daily Reports Style Manual
                                                                  13 BY MS. DUKE:
13
         (24 pages)
                                                                        Q. Good morning, Ms. Valenti. Am I saying
14 Exhibit 22 Declaration of Catherine Valenti In
         Support of Plaintiff Courthouse News
                                                                  15 that correctly?
15
         Service's Motion for Preliminary
                                                                        A. "Valenti," but it's okay.
         Injunction (73 pages)
                                                                        Q. Valenti. Perfect. Will you please state
16
   Exhibit 23 Supplemental Declaration of Catherine
                                                                  18 your full name for the record.
17
         Valenti In Support of Plaintiff
                                                                        A. Catherine Ann Valenti.
         Courthouse News Service's Motion for
                                                                 20
                                                                        O. And date of birth?
18
         Preliminary Injunction (5 pages)
19
                                                                 21
                                                                        A. 11/19/1957.
20
                                                                 22
                                                                        Q. Where do you reside?
21
22
                                                                 23
                                                                        A. In Meridian, Idaho.
23
                                                                 24
                                                                        Q. How long have you lived in Idaho?
24
                                                                 25
25
                                                                        A. Over 50 years, 55 years.
                                                         Page 3
                                                                                                                           Page 5
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(123 of 297), Pages 123: 21: 21/2003: 034-0607, 03/06/2025 0-8/15/110/110/15/2299-1238 of 2979

Catherine Valenti November 8, 2022

- 1 Q. Have you ever been through a deposition 2 before?
- 3 A. No, I have not.
- 4 Q. All right. Let me go through a couple
- 5 ground rules with you real quick to hopefully make
- 6 the process a little smoother for you.
- First and foremost, if I ask you a
- 8 question that you don't understand, will you
- 9 please let me know?
- 10 A. Sure.
- 11 Q. If you're going on to answer my
- 12 questions, we'll assume, then, that you understood
- 13 the question. Is that fair?
- 14 A. Yes, it is.
- Q. This also isn't an endurance contest.
- 16 We're not here to see how long you can sit in that
- 17 chair. So we intend to take a break about every
- 18 hour or so, but if you need one before that, you
- 19 just, you know, shout out, let us know. Okay?
- 20 A. Okay. Thank you.
- 21 Q. My only request is that if we have a
- 22 question pending, you answer that question before
- 23 we take the break. Is that fair?
- 24 A. Yes, that's fair.
- 25 Q. From time to time there may be objections

- Q. Aside from that, verbal responses, even
- 2 though we're being videotaped here today, it's
- 3 still really important to have you use "yes,"
- 4 "no," rather than nods of the head, shakes of the
- 5 head. And it's also important to avoid "uh-huhs"
- 6 and "huh-uhs" because they can be difficult to 7 transcribe.
- 8 So just do your best. And if we need to
- clarify it with you, we will on the record. But
- 10 that's why we're doing it. Okay?
- 11 A. Okay.
- 12 Q. All right. Any questions for me before 13 we start?
- 14 A. No, not right now.
- 15 Q. What did you do to prepare for your
- 16 deposition today?
- A. I went over the style manual, although 17
- 18 I've worked with it before, and just went over in
- 19 my head what things I do at court.
- Q. What specifically did you look to in the
- 21 style manual to kind of refresh your memory as to
- 22 what you're doing?
- 23 A. Cases that we report on, that we don't
- 24 report on that we get copies of, mostly.
- 25 I've been doing this for a while, so I

Page 8

- 1 to the questions that I'm asking you. We don't
- 2 have a judge here to call the balls and strikes,
- 3 so what we do is we can lodge some objections that
- 4 then are basically put as a little placeholder in
- 5 the deposition so if we need at some point in the
- 6 future to have a judge rule, we then have those
- 7 marked. Okay?
- A. Okay.
- Q. When objections are made, it will be a
- 10 little confusing at first for you. So you'll be
- 11 able to answer, but if you have any confusion in
- 12 it, you can certainly confirm with your counsel
- 13 that you're okay to go forward. Okay?
- 14 A. Okay. Thank you.
- Q. The only time you wouldn't answer a
- 16 question is if you're instructed by your attorney
- 17 not to answer; is that fair?
- 18 A. Yes.
- Q. Also, from the standpoint of today, 19
- 20 you're doing a great job right now of letting me
- 21 finish my questions or statements before you
- 22 provide a response. Keep doing that. That will
- 23 really help Amy Simmons, our court reporter, out.
- 24 Okay?
- 25 A. Okay.

- 1 didn't need to go too much through it.
- Q. Okay. And you've been with Courthouse
- 3 News since 2016, as I understand it?
- 4 A. Yes, that's right.
- 5 Q. All right. In addition to the style
- 6 manual -- what version of the style manual is
- 7 that? Is there a specific version? Or how do you
- maintain that manual?
- 9 A. This is the one that I received in
- 10 2015 -- well, 2016 when I started. And it's dated
- 11 2015 is all I know.
- 12 Q. Do you know if it's been updated at all?
- 13 A. If it has, I don't have a copy of it.
- 14 Q. Do you know who put it together?
- 15
- Q. Do you know what entity put it together? 16
- 17 A. Courthouse News, I'm sure.
- 18 Q. So you received a style manual from
- 19 Courthouse News when you started.
- 20 And the style manual you reviewed was
- 21 from 2015 in prep for your deposition here?
- 22 A. I received it earlier than that, but,
- 23 yes, this is the one I have referred to.
- 24 Q. Correct. I'm assuming you received it

25 when you started working there so that you could

(124 of 297), Paggs121:2120066364-6607, B3/06/2025cPktEntibli 12/95/2299-1234 of 2979

Catherine Valenti November 8, 2022

1

- 1 be up to speed on what your duties were?
- A. Correct. 2
- 3 Q. All right. In addition to that style
- 4 manual, what other documents did you review to
- 5 prepare for today's deposition?
- A. I looked over the declaration that I had 6 7 made.
- 8 Q. And I actually have two declarations for 9 you.
- 10 Did you look at both or just one?
- A. I only looked at one. 11
- 12 Q. Which one did you look at?
- 13 A. I don't know which one you have. I'm not13 online; is that fair?
- 14 sure.
- 15 Q. Well, that doesn't matter. Just tell me
- 16 which one you looked at.
- A. I believe it was the first one that 17
- 18 I -- I only remember doing one declaration, but it 18 is that correct?
- 19 was the first one I received or that I did that I
- 20 received a copy of.
- 21 Q. And I'll have that declaration here for
- 22 you in a moment to take a look at so that we can
- 23 confirm that we're looking at the right thing.
- 24
- 25 prepare for your deposition today?

Page 10

- 1 A. I looked through the tracking sheet that
- 2 we used, and I looked -- that's pretty much it.
- 3 Just whatever I usually work on.
- Q. Well, in addition to the tracking sheet,
- 5 you were going to say something else.
- What else did you look at in addition to 6
- 7 the tracking sheet?
- A. Oh, I'm sorry. I have a check-off list
- 9 that I use. And of course the program that we use 10 online.
- 11 Q. All right. Describe for me what the 12 tracking sheet looks like.
- A. The tracking sheet is an Excel
- 14 spreadsheet. They track the date that I see a
- 15 complaint, the case number. They track the type
- 16 of case it is, the date that I can see the docket
- 17 report, and then the date I can see the full
- 18 summary. If there's an attorney that represents
- 19 the defendant -- or the plaintiff, I'm sorry, and
- 20 if there's -- which county it's in.
- 21 Q. Okay. So that's -- the Excel spreadsheet
- 22 is the tracking sheet?
- 23 A. Correct.
- Q. Who created or developed that Excel 24
- 25 spreadsheet?

A. I don't know specifically.

- 2 Was it provided to you by someone at CNS?
- 3
- When was it provided to you for the first Q.
- 5 time?
- 6 A. I believe I was tracking Ada County not
- 7 too long -- when they went online. And as soon as
- 8 the others went online. I honestly can't
- 9 remember. I could find out for you exactly when
- 10 it was, but it's been a while.
- 11 Q. It sounds like it's only used
- 12 when -- once the counties here in Idaho went
- 14 A. As far as I know, yes.
- Q. Prior to the counties going online -- and 15
- 16 you were here before many of the counties went
- 17 online -- you were not using the tracking sheet;
- 19 A. No, I wasn't using the tracking sheet at 20 that time.
- 21 Q. What was your understanding of why CNS
- was asking you to use a tracking sheet? 22
- 23 A. I don't know for sure. My understanding
- Any other documents that you reviewed to 24 was to keep track of the complaints for the cases.
 - 25 Q. Was there any kind of tracking sheet you

- 1 used prior to the courts going online in Idaho to 2 track cases?
- A. Just the check-off sheet that has the
- 4 numbers that I check off when I look at them.
- Q. Who provided you the tracking sheet once
- 6 the courts were online?
- 7 A. That came from the office. I think Chris
- 8 and Jimmy sent it to me.
- 9 Q. And who is Chris?
- 10 A. Chris Marshall is my direct supervisor.
 - Q. And Jimmy?

11

- A. Jimmy is -- I'm not sure what his title 12
- 13 is. He works at the main office, and I get a lot
- 14 of -- the tracking sheet and updates from him.
- 15 Q. On the tracking sheet, does this tracking
- 16 sheet also note when the document was submitted to
- 17 Tyler File & Serve?
- 18 A. I'm not sure I understand.
- 19 Q. Well, do you have an understanding of
- 20 how -- let's use, for example, a complaint -- how
- 21 a complaint ultimately makes its way into the
- 22 judicial record in the state of Idaho?
- 23 A. Yes. Someone files it.
- 24 Q. Do you have an understanding of what that
- 25 process for filing entails in the state of Idaho?

Page 13

(125 of 297), Pagas 125: 21-2006: 034-66N7, 03/06/2025 0-bt Entitle 12/25/299-125 of 2979

Catherine Valenti November 8, 2022

- 1 A. I haven't filed, but they file online.
 2 And as soon as it's filed I believe -- but I'm not
 3 positive -- that there is a date and time stamp
 4 that that time -- is that what you're referring
 5 to?
- Q. Well, I'm just asking if you have any
 familiarity or knowledge as to how, for example, a
 complaint ultimately makes its way into the
 judicial record in the state of Idaho.
- A. Oh, the clerks would put it there, if
 11 that's what you're asking. I'm not completely
 12 clear. But that's as far as I go. I don't work
 13 on that end, so I can only say what I think.
 14 Q. Sure. Let me ask you a few questions
 15 based on that.
- Do you know what Tyler's File & Serve 17 program is?
- 17 program is?
 18 A. Is that the iCourts? I don't know. I
- 19 don't have anything to do with that part of it.
- Q. Okay. Do you know what the State of
- 21 Idaho's case management system is?
- A. No, not really.
- 23 Q. All right. So we were talking about
- 24 doing a tracking sheet.
- And again, I'll show some examples here

Page 14

25

- 1 in a bit of what I think you mean by that, but 2 asking some general questions at this time on
- 3 that.
- 4 Does the tracking sheet -- well, strike
- 5 that.
- 6 Before I go into that, anything
- 7 else -- you mentioned the check-off list.
- 8 What's the check-off list?
- 9 A. It's a list of numbers by hundreds that I 10 use to track -- my personal tracking of all of the
- 11 complaints that I have seen.
- 12 And I can separate -- for instance, I
- 13 circle the district court cases, which is what I
- 14 use, and then I don't miss cases.
- 15 Q. Who provided you the check-off list that 16 you use?
- 17 A. Chris Marshall.
- 18 Q. What is included on the check-off list?
- 19 A. It's just a series of numbers in six
- 20 blocks of numbers. And each of them encompass 100 21 numbers.
- Q. Okay. Other than the style manual, the
- 23 tracking sheets that you use, the check-off list
- 24 that you use, one of your declarations, anything
- 25 else that you did to -- you know, any other

Page 15

- 1 documents that you reviewed to prepare for today's
- 2 deposition?
- 3 A. I did scan through some of the court
- 4 information, the court filings. I didn't read
- 5 them very closely, but I scanned through earlier.
- Q. And what are you referencing there?
- 7 A. The case and the -- I'm not sure what
- 8 it's called. The filings, the request for
- 9 information, I think.
- 10 Q. Oh, like discovery requests or discovery
- 11 responses?
- 12 A. I think so.
- 13 Q. Do you have those documents in front of
- 14 you so we have an understanding of what those
- 15 documents were that you reviewed?
- 16 A. I can download it, but I don't have it.
- 17 Q. Sure. Go ahead. That's the one beauty
- 18 of Zoom is we can multitask.
- 19 A. Oh, good. So this one is the first
- 20 amended response to the first set of
- 21 interrogatories. And I just scanned through that.
- 22 Q. But who was answering the
- 23 interrogatories?
- A. Responding party, Courthouse News.
 - Q. So just read the full title for me so I

Page 16

- 1 understand what document --
- 2 A. Plaintiff's First Amended Response to
- 3 Defendant's First Set of Interrogatories and
- 4 Requests for Production of Documents.
- 5 Q. And what's the date of that?
- 6 A. It looks like the 4th of November.
- 7 Q. Of 2022?
- 8 A. Yes.
- 9 Q. All right. And in reviewing the First
- 10 Amended Responses to Defendant's Request for
- 11 Production, what did -- what was, I guess,
- 12 relevant to you in preparing for your deposition
- 13 today?
- 14 A. What was relevant would be how I do my
- 15 job, how I track. Some of it is not relevant, but
- 16 the tracking, the actual procedure that I do when
- 17 I go to the courthouse.
- 18 Q. Anything else?
- 19 A. I'd have to scan through it. That's
- 20 generally it. That just would help me understand
- 21 what my role would be and what I need to take a
- 22 look at. So, for instance, the tracking sheet, my
- 23 procedure when I go to court.
- Q. Okay. Other than that court document that relates to this case, any other court

Page 17

5 (Pages 14 - 17)

(126 of 297), Pages 126.21.297463:034-156R7, B3/Q6/2013-6-14tEntipy; 12/95/2299-12669f 2979

Catherine Valenti November 8, 2022

- 1 documents that relate to this case that you
- 2 reviewed?
- 3 A. No.
- 4 Q. Any other documents that you reviewed to
- 5 prepare for your deposition?
- A. No. Unless you mean -- I did review the
- 7 original complaint because I reported on it. But
- 8 other than that -- these were really all the
- 9 things that I looked at.
- Q. Did you review the original complaint in
- 11 prep for your deposition today?
- 12 A. I did not.
- 13 Q. All right. Sounds like you read the
- 14 original complaint after it was filed so that you
- 15 could report on it?
- A. Yes. 16
- Q. Any other case documents in this case 17
- 18 that you've reviewed so that you could report on
- 19 it?
- 20 A. For this one -- regarding this case? I'm
- 21 a little confused.
- 22 Q. Correct. Other than the complaint, any
- 23 other documents that you've reviewed in the case
- 24 so that you could report on them?
- 25 A. No. I only reported on the original

- Page 18
- Q. And when you say you only reported on the
- 3 original case, you mean you only reported on the
- 4 original complaint that started this case?
- 5 A. Correct.
- 6 Q. Okay. So have we adequately and
- 7 thoroughly covered all the documents that you
- 8 would have reviewed to prepare for your deposition
- 9 today?

1 case.

- A. I believe so. I can't think of anything 10
- 11 else off the top of my head. If I think of
- 12 something, should I let you know?
- 13 Q. Absolutely. Yep, that would be great,
- 14 Cathy.
- 15 A. Okay.
- 16 Q. And important to let me know before we're
- 17 done today, because this is my opportunity to have
- 18 your deposition today.
- 19 How about meetings to prepare for your
- 20 deposition?
- 21 A. Yes.
- 22 MR. FETTERLY: Objection to the extent
- 23 that the question would call for attorney-client
- 24 communications, in which case I'll instruct the
- 25 witness not to answer to the extent that it would
 - Page 19

- 1 divulge the contents of any such communications.
- 2 MS. DUKE: And let me ask it in a
- different way so that I provide you some
- protection there, Ms. Valenti.
- Q. (BY MS. DUKE) Did you meet with any
- legal counsel to prepare for your deposition
- 7 today?
- 8 A. Yes.
- 9 Q. And who did you meet with?
- 10 A. I met with Jon Fetterly.
- 11 Q. Other than Jon Fetterly, did you meet
- 12 with anyone else to prepare for your deposition?
- A. Chris -- I'm sorry, Carson McCullough was 13
- 14 on the phone. He didn't help me prepare, but he
- was on the phone.
- Q. And tell me who Carson McCullough is.
- A. Carson is my substitute at Courthouse 17
- 18 News.
- 19 Q. I understand that he covers for you when
- 20 you're on vacation or sick?
- 21 A. Yes.
- 22 Q. Anyone other than Mr. McCullough,
- 23 yourself, and Mr. Fetterly on that prep call?
- 24 A. No.
- 25 Q. Did you meet with anyone else about your

- 1 deposition other than Mr. Fetterly?
- 2 A. No.
- 3 Q. Did you have any conversations with Bill
- Girdner at all about your deposition?
- A. He gave me the information about when it
- was and asked me a few questions in general.
- 7 Q. All right. And what questions did he ask
- 8 you?
- A. Mostly about my procedure, go to court,
- 10 and some about the tracking. I can't recall which
- 11 ones he asked.
- Q. All right. So what would you have told
- 13 Mr. Girdner about the procedure that you use while
- 14 working for CNS in Idaho?
- 15 A. I went through the steps that I do every
- 16 day when I go to the courthouse and prepare.
- Q. What about with respect to tracking? 17
- What would you have discussed with Mr. Girdner?
- 19 A. I can't remember exactly what it was.
- 20 Just he asked how I ensured that I tracked
- 21 everything.
- 22 Q. When was this conversation?
- 23 A. That was -- he called earlier. I'm not
- 24 sure exactly when. But I've talked to him a few
- 25 times over the, you know, at least like -- this

(127 of 297), Pages 127: 21 29 4003 054 156 N7, B3 (CA/2013 5 CP) tEntry: 12/95/229 12-12-6 of 2979

Catherine Valenti November 8, 2022

- 1 particular conversation, was it either Monday or
- 2 Friday? Friday, I believe. I can't remember. I
- 3 can't remember. I'm sorry.
- O. It's okay. So it sounds like around
- 5 Friday of last week, Mr. Girdner talked to you
- 6 about what your process is and what your tracking process is.
- A. I think he just wanted clarification on a 9 few things.
- 10 Q. You mentioned that you talked with him
- 11 other times about this case. When were those?
- MR. FETTERLY: And real quick, objection 12
- 13 to the extent that it relates to conversations
- 14 with Mr. Girdner and counsel. That would be
- 15 protected attorney-client communications.
- Q. (BY MS. DUKE) Correct. So what he's
- 17 saying there is if Mr. Fetterly or someone from
- 18 Mr. Fetterly's office was there during the
- 19 communication with Mr. Girdner, you don't tell me
- 20 what the content is. It's only when it's you and
- 21 Mr. Girdner talking.
- 22 A. Okay. The time before -- and I can't
- 23 remember exactly when it was -- he was just
- 24 letting me know that there would be this
- 25 deposition going on.

- Q. Did he talk to you before or after the
- 2 lawsuit was filed?
- A. It must have been before; I can't
- 4 remember exactly. That there was going to be a
- 5 lawsuit filed.
- Q. What did he tell you as to the basis for the lawsuit?
- A. He mentioned we were looking for
- 9 immediate access to complaints that were meant for
- 10 public.
- 11 Q. So did he describe to you that the
- 12 lawsuit entailed looking for immediate access to
- 13 complaints that had been filed in the district
- 14 court of the state of Idaho?
- A. Yes, for the counties. 15
- 16 Q. Anything else that he told you about the
- 17 lawsuit?
- 18 A. I think that's it. Just letting me know
- 19 that it's going to happen.
- Q. Did he ask you for any information to
- 21 include in the lawsuit?
- 22 A. Other than the tracking that I was
- 23 already doing, I think that was it.
- 24 Q. Did you -- prior to this lawsuit being
- 25 filed, did you ever raise as a concern to anyone

Page 22

- 1 Q. Any other time?
- 2 A. Regarding this specific deposition?
- 3 Q. No, regarding the lawsuit itself,
- 4 Courthouse News vs. Sarah Omundson.
- 5 A. No. Just the times that I've already 6 talked about.
- 7 Q. And were there times where it was you,
- 8 Mr. Girdner, and counsel for Courthouse News
- 9 Service -- were there times when there were
- 10 conversations that you had with them?
- 11 A. All together?
- 12 Q. Yes.
- 13 A. No.
- Q. Other than Mr. Girdner, anyone else at
- 15 Courthouse News that you talked to about this
- 16 lawsuit? Not just your deposition, but this
- 17 lawsuit.
- 18 A. Are you talking about the details of the
- 19 lawsuit or that there was a lawsuit?
- Q. We can start with whether -- you know,
- 21 that there was a lawsuit, and then we can get into
- 22 the details.
- A. My immediate supervisor, Chris Marshall,
- 24 he talked to me. But in general, just what I've
- 25 already told you.

- 1 at CNS that you were concerned about your timing
- 2 of getting filed complaints in the state courts in
- 3 Idaho?
- 4 A. I'm not sure if it was concern, but I
- 5 would think if there was a complaint that was
- 6 delayed, then they would have to. But I can't
- 7 think of anything specific.
- Q. Well, what I'm trying to get to is is
- 9 there a point in time where you yourself, without
- 10 having somebody initiate it, but as a person
- 11 reporting in the state of Idaho, where you raised
- 12 a concern or an issue or a question to CNS about
- 13 the timing in which you were receiving filed
- 14 complaints in the state courts?
- 15 A. I did not. That was their end that they
- 16 were talking, a concern about it.
- Q. So what that means to me is that you 17
- 18 didn't raise any concern about the timeliness of
- 19 you being able to see filed complaints. Instead,
- 20 CNS came to you with questions about "We'd like to
- 21 know how quickly you're getting filed complaints";
- 22 is that correct?
- 23 A. Correct. My job was just to report them.
- 24 Q. And when they asked whether there were
- 25 any delays in receiving filed complaints, you then Page 25

Page 23

7 (Pages 22 - 25)

(128 of 297), Pagas 128:21-200603:034-66N7, 03/06/2025-6-bt Entitle 12/25/229-128 of 2979

Catherine Valenti November 8, 2022

- 1 would provide your tracking sheets that would then
- 2 provide that information to them as to the timing
- 3 that you were tracking?
- 4 A. I provided the tracking sheet first on a
- 5 weekly and then every day. So they received that6 all the time.
- 7 Q. Other than the tracking sheets, anything
- 8 else that you provided to them to show the timing
- 9 of when you would receive a filed complaint?
- 10 A. Specifically, just the request that they
- 11 asked for a few specific cases that are in the
- 12 proceedings that I just showed you.
- 13 Q. Oh, in the documents that you were
- 14 reviewing?
- 15 A. Right. There's a few cases that were
- 16 late, and so I provided those.
- 17 Q. Any other conversations with anyone at
- 18 CNS without legal counsel present related to this
- 19 lawsuit and CNS's claims that it is not receiving
- 20 filed complaints in a First Amendment, timely
- 21 manner?
- A. Not that I can think of.
- 23 Q. All right. So have we covered the
- 24 universe of documents that you would have used to
- 25 prepare for your deposition today along with any
 - Page 26

- 1 correct?
- 2 A. That's my understanding, but you would 3 have to verify that.
- 4 Q. And do you have an understanding of what
- 5 the subscription fee is to receive the Big Sky
- 6 Report?
- 7 A. No, I don't.
- Q. What training did you receive when you
- 9 started at CNS as to what to include in the Big
- 10 Sky Report?
- 11 A. Received about two or three weeks of
- 12 training with the person that I took over from. I
- 13 was a substitute initially, and then I was hired
- 14 full time.
- 15 And so we went through what to include,
- 16 mostly based on the CNS manual and how to format 17 everything.
- 18 Q. Why do you include in the Big Sky Report
- 19 a report on Montana, Wyoming, and Idaho all
- 20 included in one?
- A. The Big Sky Report is actually from
- 22 Montana, Wyoming, and Idaho. And I report on the
- 23 USDC Montana, Idaho, and Wyoming complaints.
- I, of course, report on all of the Idaho
- 25 counties, and I also collect information that

Page 28

- 1 meetings that you would have had to prepare for 2 that deposition?
- 3 A. Yes, I believe so.
- 4 Q. All right.
- 5 Is Exhibit No. 20 -- we're going to keep
- 6 a continuing list of exhibits, so we'll start with
- 7 Exhibit No. 20 here. Let me go ahead and share my
- 8 screen and show you that.
- 9 (Deposition Exhibit No. 20 was marked.)
- 10 Q. (BY MS. DUKE) All right. Can you see
- 11 the document I have up there?
- 12 A. Yes, I can.
- 13 Q. Tell me what Exhibit 20 is.
- 14 A. It's -- Exhibit 20 looks like a copy of a
- 15 Big Sky Report.
- 16 Q. What is the Big Sky Report?
- 17 A. A Big Sky Report is what I put together
- 18 when I report on the different cases. And at the
- 19 end of the day, I put them all into the reporting
- 20 program, and they go out to our subscribers.
- Q. Does the Big Sky Report go to the public?
- A. Anyone who is a subscriber, as far as I
- 23 know.
- Q. So the Big Sky Report only goes to
- 25 subscribers, not to the general public; is that

- 1 researchers we have in Montana and Wyoming that
- 2 send me either daily or weekly or monthly. And I
- 3 compile those into the report.
- 4 Q. So when we talk about this report with
- 5 Montana -- and let's use Montana as an example.
- 6 And not the district court in Montana. Let's use 7 the state court.
- 8 Do you report on state court proceedings
- 9 in Montana?
- 10 A. I collect the state court information
- 11 from the researchers that are there. I just edit
- 12 them and put them in my report.
- 13 Q. So describe what that process is like.
- 14 If I were a complaint and I were filed today in
- 15 the state of Montana in Missoula County, when are
- 16 you going to report on that filing and how?
- 17 MR. FETTERLY: Objection; vague and
- 18 ambiguous and overbroad.
- 19 You may answer.
- 20 THE WITNESS: So I can answer? Yes?
- 21 MR. FETTERLY: Yes.
- 22 Q. (BY MS. DUKE) Yes.
- A. When the researcher gets the
- 24 report -- and I'm not sure how often. It depends

25 on the researcher -- they put it in basically the

Page 29

8 (Pages 26 - 29)

(129 of 297), Pages 149:21f-297663034D6697, D3/QA/2A260PktFntry: 120:13/2a961329 263979

Catherine Valenti November 8, 2022

- 1 same order that I would put it in, and they send
- 2 it to me by email. And sometimes they include a
- 3 copy of the complaint so that I can include that.
- 4 And it's usually pretty well done, but I
- 5 do a little minor editing on the summaries,
- 6 usually to make sure everything reads well.
- 7 Q. So there are researchers employed in the
- 8 state of Montana, for instance, that are learning
- 9 what complaints have been filed in the state
- 10 courts in Montana; is that correct?
- 11 A. Yes.
- 12 Q. And then those researchers, do they, to
- 13 your knowledge, report on those filings in the
- 14 state of Montana? Or is that, then, directed to
- 15 you to do?
- 16 A. They report on them, but they send it to
- 17 me to include. So they write up a summary, but
- 18 I'm the one that puts it into our report.
- 19 Q. Where do they report on them?
- MR. FETTERLY: Objection; vague and ambiguous.
- You can answer.
- Q. (BY MS. DUKE) Go ahead.
- A. They report on them from the counties
- 25 they've been assigned to, if that's what you mean 25

- 1 A. They go through the docket report that
- 2 they were given, and they look at the cases that
- 3 are applicable. They give me the complaint with
- 4 the date and the case number, the county that it's
- 5 in, the defendant, the plaintiff, the judge, and
- 6 the attorney fields and a short summary. And I 7 take it from there.
- 8 Q. It's my understanding they have to, it
- 9 sounds like from a previous answer, actually go
- 10 county to county?
- 11 A. Yes, although I think there are some
- 12 counties in Montana now that allow online access.
- 13 Q. Has CNS asked that you track Montana's
- 14 timeliness of filings that are then available to
- 15 the press?
- 16 A. No.
- 17 Q. Has CNS asked you to track Wyoming's
- 18 timing related to a complaint that's filed and
- 19 then its access to the press once it's filed?
- 20 A. No.

21

- Q. Do you have any kind of data or report
- 22 that would show how much time it takes for a
- 23 Montana court to allow CNS to have access to a
- 24 newly filed complaint?
 - 5 A. No, I don't track that.

Page 32

- 1 They, most of the time, have to drive to counties.
- 2 Q. And then they send out a report to
- 3 subscribers?
- 4 A. No. They send it to me, and I compile
- 5 all of the cases for the day and compile the
- 6 report. And then I -- it gets sent out to all the 7 subscribers.
- 8 Q. So you're responsible for actually doing
- 9 the report to subscribers of any Montana complaint
- 10 that's filed?
- MR. FETTERLY: Objection; vague and
- 12 ambiguous, overbroad.
- 13 You may answer.
- 14 THE WITNESS: Yes.
- 15 Q. (BY MS. DUKE) And you're also
- 16 responsible for reporting on any Wyoming complaint
- 17 that's filed?
- 18 MR. FETTERLY: Same objections, lacks
- 19 foundation.
- You may answer.
- 21 THE WITNESS: Yes, as long as all the
- 22 file is sent to me, yes.
- Q. (BY MS. DUKE) And when you say that the
- 24 researchers in Montana, for example, report on
- 25 these new filings, what do you mean by that?

- 1 Q. Do you know anybody that does?
- 2 A. I'm not sure. That's something that
- 3 you'd have to ask them.
- 4 Q. When you say "them," you mean CNS?
- 5 A. Yes, I'm sorry. CNS.
- 6 Q. And do you know if anyone tracks
- 7 Wyoming's newly filed complaints and the time it
- 8 takes for those newly filed complaints to be
- 9 available to the press?
- 10 A. As far as I know, no.
- 11 Q. Same answer, that I would need to ask
- 12 somebody at CNS?
- 13 A. Yes.
- 14 Q. Do you know whether Montana, all of its
- 15 counties are on an electronic filing system now?
- 16 A. I don't know that.
- 17 Q. Do you know whether Wyoming's are all on
- 18 an electronic filing system?
- 19 A. I don't know that.
- Q. Do you know whether some of Montana's are
- 21 on an electric filing system?
- 22 A. Yes, some of them, I believe, are.
- Q. And do you know which counties?
- 24 A. I don't know all of them, but I --
- Q. What are some of them?

Page 33

(130 of 297), Pages 130:29f-297668034-6697, D3/96/2A250-8kt Fnty: 11918/2299-139 9f 3979

Catherine Valenti November 8, 2022

13

- A. I think Yellowstone, Gallatin, Flathead,
- 2 Madison, Jefferson, Fallon, Chouteau.
- 3 Q. Chouteau, okay.
- A. And those are just some I know off the
- 5 top of my head. I don't know the others.
- Q. Do you know how long it takes for the
- 7 reporters in Montana, for instance, that work with
- 8 CNS to send you newly filed complaints that you
- 9 then report on?
- A. They're on a schedule. I'm not sure what
- 11 you mean. For instance --
- 12 Q. Well, what schedule are they on?
- 13 A. Well, for instance, Yellowstone, I
- 14 get -- if there's something available, I get it
- 15 every day. That's pretty much all I know. But
- 16 some of them only visit a court once a week or
- 17 once a month or every two weeks.
- 18 Q. And that's a schedule that you understand
- 19 has been set by CNS as to CNS accessing complaints
- 20 in those various counties in the state of Montana?
- 21 A. Correct.
- 22 Q. And then same for Wyoming, I'm assuming?
- 23 Are any same-day in Wyoming?
- 24 A. I don't know. Any same-day? If they
- 25 happen to visit the court on the same day,

Page 34

1

- 1 possibly. But I don't know.
- Q. So if I'm in Montana, for instance, and
- 3 it's one of the counties where CNS is going to do
- 4 their visit each month, it's possible that you'll
- 5 receive a newly filed complaint to report on up to
- 6 a month after it's been filed; is that correct?
- 7 A. Yes.
- 8 Q. Now, with respect to including Wyoming
- 9 and Montana in the Big Sky Report, is there
- 10 anything in Exhibit 20 that would tell you when
- 11 those Montana cases were filed?
- 12 A. When the -- yes, the date that I get
- 13 them. The date is in there. It will tell them
- 14 when it's filed.
- Q. So if I look at this example we have up
- 16 right now, you see it's the United States District
- 17 Court, so that's a federal court. Is that your
- 18 understanding?
- 19 A. Yes.
- Q. And it looks like it says "Butte,
- 21 Billings." So that must be one's in Butte and
- 22 one's in Billings?
- 23 A. Correct.
- 24 Q. Is the Butte one the Great Harvest
- 25 Franchising, Inc.?

A. Yes.

- 2 Q. And it looks like that would have been
- 3 filed on 10/7/2022, but not reported by you until
- 4 the date of Exhibit 20, which is October 11, 2022.
- A. That's what it looks like, yes.
- 6 Q. With respect to federal court filings, do
- 7 you know if Montana's federal court is on an
- electronic filing system?
- 9 A. Yes, I believe so.
- 10 Q. Who is the reporter for CNS that will
- obtain the federal court filings in Montana and
- 12 then provide them to you to report on?
 - A. I collect that myself.
- 14 Q. And how frequently do you look at the
- 15 Montana federal court?
- A. Several times a day.
- Q. So if we go back to this example, why 17
- 18 would it have taken you four days to report on
- this Great Harvest Franchising, Inc., case?
- A. I'm not sure. Sometimes if it -- I don't
- 21 know if that's a weekend. And it takes a couple
- 22 weekends, sometimes. It could be that it was
- 23 reported later after I closed out my complaint. I
- 24 can't tell you for sure.
- 25 Q. What are the hours that you work?

Page 36

- A. I work -- start at home in the mornings.
- Usually work six to seven hours a day. Probably
- average of six and a half.
- 4 I start out in the mornings doing docket
- 5 reports and going into other cases. And then I go
- 6 into the courthouse in the afternoon.
- 7 Q. So what are your typical hours?
- 8 A. It's broken up. I usually have, like,
- maybe 8:00 to 9:00 to midmorning, then I take a
- 10 break, and then I usually work until before I go
- 11 to court, so maybe -- it can vary. 10:00 to 2:00,
- something like that.
- 13 Q. Okay. And then the court, when are you
- 14 done with your day?
- 15 A. 5:00. Well, 5:00 from the court, and
- 16 then I have to finish up when I get home.
- 17 Q. Is that Monday through Friday?
- 18 A. Yes.
- 19 Q. Do you work on weekends?
- 20 A. No.
- 21 Q. So if a complaint is filed in the United
- 22 States District Court for the District of Idaho,
- 23 let's say at 6:00 p.m. on a Friday night, you're
- 24 not likely going to report on that until Monday; 25 is that correct?

Page 37

Catherine Valenti November 8, 2022

- 1 A. Most likely I won't see it until Monday.
- Q. And same for a holiday weekend; if it's
- 3 Labor Day and that same complaint, let's say, is
- 4 filed at 6:00 on a Friday night, you're not going
- 5 to report on it until a Tuesday, correct?
- 6 A. Correct.
- 7 Q. Have you been asked by CNS to review the
- 8 federal court docket in the state of Idaho on the
- 9 weekends to determine what's been filed since you
- 10 looked on Friday so that you can report on
- 11 anything that's been filed Friday or throughout
- 12 the weekend?
- 13 A. No.
- 14 Q. I'm going to stop my screen share here
- 15 real quick.
- With respect to the reports you generate,
- 17 are you the one that comes up with the summary for
- 18 the state of Idaho district court and state
- 19 courts?
- 20 A. Yes.
- 21 Q. And then for Montana and Wyoming, it's my
- 22 understanding you have reporters from those areas
- 23 send you those, and then you'll either publish
- 24 them as is or you'll do some revisions?
- 25 A. Yes. I do check three courts online in

- 1 THE VIDEOGRAPHER: All right. So we are
- 2 recording. The time is 2:11 p.m., and we are back 3 on the record.
- 4 Q. (BY MS. DUKE) All right. Ms. Valenti,
- 5 we're back on the record.
- 6 Did you have an opportunity to talk to
- 7 anybody on the break?
- 8 A. Yes.
- 9 Q. And with whom did you speak?
- 10 A. With Jon Fetterly.
- 11 Q. Okay. Anybody else?
- 12 A. No.
- 13 Q. All right. So let me go through a few
- 14 things with you.
- We were looking at a Big Sky Report, the
- 16 October 11 report, which is Exhibit 20.
- 17 You had also mentioned a manual. And let
- 18 me go ahead and pull that up. We can mark it as
- 19 Exhibit 21.
- 20 (Deposition Exhibit No. 21 was marked.)
- 21 Q. (BY MS. DUKE) All right. Can you see
- 22 Exhibit 21?
- 23 A. Yes, I can.
- Q. All right. Perfect. Tell me what the
- 25 Exhibit 21 is.

Page 40

- 1 Montana.
- 2 Q. And which courts are those again?
- 3 A. I check Madison and Fallon and Flathead.
- 4 Q. When -- and what about Wyoming? Do you
- 5 do any in Wyoming?
- 6 A. No.
- 7 Q. Do you have reporters in Wyoming, that
- 8 same process; they'll go to the various
- 9 courthouses at whatever time they know they're
- 10 supposed to, and then they'll send that info to
- 11 you to include in the actual report that CNS sends
- 12 out?
- 13 A. Yes.
- MS. DUKE: Now, let's go ahead -- real
- 15 quick, actually, I know we haven't been going
- 16 quite an hour, but we're close. Let's take a
- 17 quick break so I can just get some exhibits
- 18 organized here real fast.
- 19 THE WITNESS: Okay.
- MS. DUKE: So take, I don't know, five to
- 21 ten minutes, whatever works for you.
- MR. FETTERLY: Cathy -- off the record.
- THE VIDEOGRAPHER: Okay. So the time is
- 24 2:03 p.m., and we are off the record.
- 25 (Break taken from 2:03 p.m. to 2:11 p.m.)

- 1 A. This is the reports style manual from
- 2 CNS.

Page 38

- 3 Q. This was provided to you when you started
- 4 with CNS?
- 5 A. Yes.
- 6 Q. And did you understand that this was the
- 7 training manual related to what you were to report
- 8 on, how you were to report on, and the timeliness
- 9 to report on by CNS when you were retained?
- 10 A. Yes.
- 11 Q. Now, CNS is a subscription-based legal
- 12 news service, correct?
- 13 A. Yes.
- 14 Q. One of their subscription services is the
- 15 Big Sky Report that we just looked at as
- 16 Exhibit 20?
- 17 A. Yes.
- 18 Q. That is the Big Sky Report is the report
- 19 that you are responsible for putting together?
- A. Yes, that's correct.
- 21 Q. Are you responsible for putting together
- 22 any other report for CNS?
- 23 A. No.
- Q. Who did you replace when you took over at
- 25 CNS?

Page 41

11 (Pages 38 - 41)

(132 of 297), Pages 132:29f-29766903-6697, D3:(16)(20260-2014) Pages 132:29f-296903-6697, D3:(16)(20260-2014)

Catherine Valenti November 8, 2022

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1 member of the press?

8 member of the press?

13 bring it to the public.

17 is that correct?

A. Yes.

5 foundation.

MR. FETTERLY: Objection; vague and

Q. (BY MS. DUKE) Do you consider yourself a

Q. What do you understand "press" to mean in

A. Someone who would report on news and

Q. And the news that you're reporting on to

15 bring to the public are the newly -- a summary of

16 the newly filed complaints in the state of Idaho;

A. Yes, for civil district court cases.

Q. Do you have any education or training

MR. FETTERLY: Objection; vague and

THE WITNESS: I only have what I've

Q. (BY MS. DUKE) What have you learned on

Page 44

3 ambiguous, overbroad as to the definition of

"credentialed member of the press," lacks

THE WITNESS: I don't.

11 the state of Idaho as a member of the press?

- 1 A. Phil Janquart.
- 2 Q. Do you know where he went?
- 3 A. I do not.
- 4 Q. How do you spell his last name?
- 5 A. I think it's J-a-n-q-u-a-r-t, I think.
- 6 Q. Prior to starting at CNS, what type of
- 7 work had you done? Had you been a reporter 8 before?
- 9 A. I have not been a reporter.
- 10 Q. Are you currently a reporter?
- 11 A. Yes.
- 12 Q. Do you have any credentials?
- 13 A. Explain "credentials." Official
- 14 professional credentials?
- 15 O. Correct.
- 16 A. No. I'm a member of the Idaho Press
- 17 Club, but that's not credentials.
- MR. FETTERLY: Belated objection to
- 19 overbroad. Excuse me.
- Q. (BY MS. DUKE) You understand that when
- 21 you're a member of the Idaho Press Club, that that
- 22 does not mean that you're a credentialed member of
- 23 the press in the state of Idaho, correct?
- 24 A. Correct.

1 Press Club?

A. No.

A. No, it was after.

2

4

6 7

8

9

11 12

14

23 ago.

24

10 CNS?

13 Press Club?

15 more information.

3 ago.

5 do?

Q. When did you become a member of the Idaho

A. I don't remember exactly. Several years

Q. Is that something that CNS asked you to

Q. It's something you did on your own?

Q. Was it before you started working with

A. I thought it would be a good idea to get

Q. What information have you learned since

19 there, but just going through some of the records,

22 really remember very much. It was quite a while

Q. Do you know what steps one would need to

20 I can't remember. Some of the things that they

21 have, some of the issues that come up. I can't

25 take in the state of Idaho to be a credentialed

17 being a member of the Idaho Press Club?
18 A. Now, initially -- I'm not active in

Q. Why did you become a member of the Idaho

22 ambiguous, overbroad.

20 related to Idaho's court system?

24 learned on this job specifically.

1 this job as to Idaho's court system?

- 2 A. The court system?
- 3 Q. Yes.
- 4 A. How to read the cases, how to condense
- 5 them into a summary, what is important to a court,
- 6 those types of things.
- 7 Q. Anything else?
- 8 A. Just how it relates to Courthouse News.
- 9 I understand the basic filings and reporting
- 10 follow-ups, but that's pretty much it.
- 11 Q. Have you, while working for CNS, been
- 12 trained by CNS as to the difference between a
- 13 complaint and a petition in the state of Idaho?
- 14 A. Not specifically, but I understand
- 15 petitions and complaints. You know, I report on a
- 16 few petitions, but I'm not sure exactly what
- 17 you're asking I've been trained on the differences
- 18 between.
- 19 Q. Well, what do you understand a petition
- 20 is in the state of Idaho?
- A. It's asking for something from the court,
- 22 from the judge, as far as I know.
- 23 Q. Do you know what types of cases it
- 24 applies to?
- 25 A. There may be appeals. I'm not sure

Page 43

3

12 (Pages 42 - 45)

Catherine Valenti November 8, 2022

4 that means.

proceeding?

19 ambiguous, overbroad.

You may answer.

18

20

21

24

25 ask for it?

5

- 1 exactly what you mean. Petitions for what kind of 2 cases?
- 3 Q. Does CNS report on any appeals that are
- 4 filed in the Idaho Supreme Court?
- A. I don't know. I don't report on the
- 6 Idaho Supreme Court appeals.
- 7 Q. Tell me what you understand a complaint 8 to be in the state of Idaho.
- 9 A. That I work with, the complaint?
- 10 Q. Yeah, what is it? What do you understand
- 11 a complaint to be in the state of Idaho?
- A. A complaint is a lawsuit action brought 12
- 13 by a party and submitted to the court, a lawsuit,
- 14 complaint.
- Q. Let me ask some questions related to 15 16 that.
- Do you understand a complaint to be a 17
- 18 legal document that once filed with the court
- 19 starts a legal proceeding in the state of Idaho?
- 20 A. Yes.
- 21 Q. And do you have an understanding that
- 22 until that complaint is filed, there is not a
- 23 legal proceeding in the state of Idaho related to

2 county, Ada County, going online and then

3 ultimately other counties in the state before they

6 would obtain a filed complaint from -- let's say a

7 complaint that's filed in Ada County before the

A. Okay. I would get reports, docket

10 reports from the clerk, who would print them off

Q. Now, I know that you worked prior to the

Describe for us your process, how you

24 that complaint?

4 all went fully electronic.

8 electronic filing system.

25 A. Yes.

1

5

Page 46

A. For the docket report? 1

- 2 Q. Yeah. What was your typical process back

- A. So usually it would be back a few days to 6
- 7 make sure that we caught all of the complaints in

- 11 for me. 11 know, two or three days -- I can't remember
- 12 And I would go through them and circle
- 13 the ones that were district court cases that I 13 and time that I arrived. And we would do that
- 14 wanted to look at and then give that to them. And
- 15 they would bring paper copies into the room to
- 16 look at. If I wanted any copies, they could copy
- 17 it off for me.
- 18 Q. And did you understand when you would
- 19 receive those docket reports from the clerk, those
- 20 were actual filed complaints --
- 21 A. Yes.
- 22 Q. -- reflected in the documents?
- 23 MR. FETTERLY: Objection; vague and
- 24 ambiguous, overbroad, lacks foundation.
- 25 MS. DUKE: So, Jon, so I can clarify the

- 3 then as to the timing when you would ask for the

1 question, what do you need me to clarify on that?

MS. DUKE: Okay. I'll rephrase it.

would receive that docket report from the clerk,

8 that report would include newly filed complaints

that had initiated court proceedings in the state

Q. What is your understanding as to how

13 quickly the court clerk in Ada County would get

15 look at the newly filed complaints in Ada County

22 requested they just gave to me every day. So it

came right away, if that's what you --

MR. FETTERLY: Objection; vague and

THE WITNESS: The docket report that I

Q. (BY MS. DUKE) What time of day would you

14 you that docket report so that you could take a

16 that were initiating -- that initiated a legal

A. That is my understanding, yes.

10 of Idaho; is that your understanding?

3 incorporated "actual filed." I don't know what

MR. FETTERLY: I believe the question

Q. (BY MS. DUKE) Ms. Valenti, so when you

- 4 docket report by the clerk for newly filed
- 5 complaints in Ada County?
- 8 case we missed a number. And so a lot of them I
- 9 didn't because that was reported on or looked at.
- 10 So we usually went back about, I don't
- 12 exactly -- just to cover it up to the current date
- 14 multiple times a day.
- 15 Q. How many times a day would you have the
- 16 Ada County district court clerk print a docket
- 17 report for you back prior to Ada County going on
- 18 to electronic filing?
- MR. FETTERLY: Objection; vague and 19
- 20 ambiguous, overbroad.
- 21 You may answer.
- 22 THE WITNESS: At least two times. It
- 23 depends. Sometimes three if I was caught up, just
- 24 to make sure we caught them all.

25 Q. (BY MS. DUKE) When those docket reports Page 49

13 (Pages 46 - 49)

Page 48

(134 of 297), Page 13429f-2**976**68034-06997, D3/96/2A260-0kt Fnlgy: 11918/2a9p-134 of 3979

Catherine Valenti November 8, 2022

- 1 were provided to you by one of the clerks at Ada
- 2 County, what were you working on for copies of
- 3 complaints that you wanted to report on?
- 4 The civil district court cases.
- 5 Q. Why were you limiting what you wanted to
- 6 report on to just the civil district court cases?
- A. That was the only thing that I was
- 8 requested to obtain and report on. We don't do
- 9 magistrate or small claims.
- Q. And when you say that was all you were
- 11 requested to report on, that was -- when you say
- 12 that, that's CNS giving you the directive that it
- 13 was only district court complaints that it wanted
- 14 you to look to and potentially report on, correct?
- 15 A. Correct.
- 16 Q. And then with respect to those district
- 17 court complaints, CNS also advised you that it was
- 18 interested in any case where a business, public
- 19 entity, or other non-individual was included among
- 20 the defendants to report on, correct?
- 21 A. Correct.
- 22 Q. And if there were any famous individuals
- 23 like Bill Clinton or Martha Stewart, to go ahead
- 24 and report on those as well?
- 25 A. Yes, anything that would be newsworthy

Page 50

- 1 like that.
- MS. DUKE: One second. 3 (Brief pause in the proceedings.)
- 4 MS. DUKE: All right. Sara is going to
- 5 be jumping on -- she's got to go get her daughter
- 6 from school. That's why -- if you see another
- 7 name pop up, that's why, Jon.
- 8 MR. FETTERLY: Okay. Thank you.
- 9 MS. DUKE: Yep.
- 10 Q. (BY MS. DUKE) And the way that you knew
- 11 what to report on was identified for you in what I
- 12 have up as Exhibit 21, the CNS daily report,
- 13 correct?

2

- 14 MR. FETTERLY: Objection; vague and
- 15 ambiguous, overbroad.
- 16 You may answer.
- 17 MS. DUKE: Let me try to correct that.
- 18 I'm not sure what the issue is.
- 19 Q. (BY MS. DUKE) You were asked by CNS to
- 20 report on certain filed complaints in the state of
- 21 Idaho, correct?
- 22 A. Yes.
- 23 Q. And the filed complaints that you were
- 24 instructed to report on, the way that you would
- 25 filter through those was described for you in

- 1 Exhibit No. 21, which is the CNS Daily Reports,
- 2 Introduction and Style Manual?
- 3 A. Yes.
- 4 Q. Is that the only manual that you would
- 5 use in determining whether something was going to
- 6 be newsworthy for CNS?
- A. That's the only one I know, yes. 7
- Q. In looking to this docketing sheet that
- 9 you would receive from the Ada County
- 10 clerk -- strike that.
- In looking at the docketing reports that
- 12 you would receive from the Ada County clerk prior
- 13 to Ada County going to electronic filing, it's my
- 14 understanding you would not have them provide you
- 15 with magistrate or small claims cases; is that
- 16 correct?
- A. The docket report had them on there, but 17
- 18 they would not give me the -- I didn't ask for the
- 19 others.
- 20 Q. Got it. So Ada County would provide you
- 21 with the docket report that had all of those
- 22 initial case complaints that had been filed or
- 23 petitions that had been filed; you were just
- 24 honing in to the district court; is that correct?
- 25 A. Yes.

Page 52

- Q. And that was based on your instruction by 1
- 2 CNS?
- 3 A. Yes.
- 4 Q. Prior to Ada County transitioning to an
- 5 electronic filing system -- and do you know when
- 6 that was that Ada County converted from
- 7 electronic -- or from paper filing to electronic
- 8 filing?
- 9 A. I am not certain, but I believe it was
- 10 later in 2016. But I don't remember exactly.
- 11 Again, I could look it up.
- 12 Q. Sure. And how would you look that up
- 13 again?
- A. I would be able to go through the website
- 15 that they have up that shows everything that --
- Q. Gotcha. 16
- 17 A. I believe that's still up.
- 18 Q. It's not a document you separately
- 19 maintain?
- 20 A. No. No.
- 21 Q. So prior to Ada County going
- 22 electronic -- so this is back in the paper filing
- 23 days -- tell me what the process you understood to
- 24 be for a filer to actually go to the courthouse,
- 25 provide the copy of the complaint to the clerk,

Page 53

(135 of 297), Page 1352f 20068034D697,D3/9A/2A260DktFnlgy:12/14/26/2a9p136 26779

Catherine Valenti November 8, 2022

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3 and ask them for a copy?

6 ambiguous, overbroad.

12 at it, what do you mean?

A. Yes.

A. The paper copy.

21 not need a copy; is that fair?

23 put in -- type in notes that I needed.

15 stamped paper copy; is that correct?

A. Yes.

8 your answer?

- 1 have the clerk accept it and put it into the file.
- 2 What's your understanding of how that process
- 3 worked?
- 4 MR. FETTERLY: Objection. Once again,
- 5 vague and ambiguous as to the word "actually."
- 6 You may answer.
- 7 THE WITNESS: I think as you explained
- 8 it. I wasn't on that end of it. I haven't filed
- 9 anything. So I'm thinking that my understanding
- 10 would be that they would have it for the clerk,
- 11 and that was how it would be filed.
- Q. (BY MS. DUKE) So you understood that 12
- 13 someone would be standing in line -- I'm sure you
- 14 actually personally observed this from time to
- 15 time; is that fair?
- 16 A. I'm sure I did, yeah. It was a while
- 17 ago.
- 18 Q. Someone would be standing in line to wait
- 19 their turn and to then talk with the county clerk,
- 20 correct?
- 21 A. Yes.
- 22 MR. FETTERLY: Objection; vague and
- 23 ambiguous, overbroad, foundation.
- 24 Q. (BY MS. DUKE) And then they would hand
- 25 the -- let's say it's a district court complaint

Page 54

- 1 wanted to review a complaint, those were
- 2 complaints that had already been accepted and

Q. And then you would go through and you

2 would actually determine what you wanted a copy of

MR. FETTERLY: Objection; vague and

Q. (BY MS. DUKE) Sorry, Cathy. What was

A. I would look at it, yes, before I would 10 ask for a copy. Sometimes I did not need a copy.

Q. Oh, I see. When you say you would look

Q. And so the clerk would hand you the file

Q. And then you could look and decide

19 could just quickly, I think, jot down some notes

20 so you had an understanding of the case and then

Q. And those complaints that you were

25 looking to, if you looked on the docket sheet and

18 whether you actually wanted a copy or whether you

A. Yes, I had my laptop with me so I could

- filed by the court clerk, correct?
- MR. FETTERLY: Objection; vague and 4
- ambiguous, overbroad, calls for legal conclusion,
- 6 lacks foundation.
- 7 You may answer.
- 8 THE WITNESS: As far as I know, they
- 9 were. I always received a copy when I asked for
- 10 one.
- 11 Q. (BY MS. DUKE) Sure. And the copy you
 - 12 received had a stamp on top that would provide the
- 13 date and that information so you could have that
- 14 as well, correct?
- 15 A. Yes.
- Q. And that was a stamp that the district 16
- 17 court clerk had placed when the document was
- 18 filed, right?
- 19 A. I'm assuming that's when it was placed,
- 20 yes.
- 21 Q. Because it was a district court stamp
- 22 that appeared on the first page of the complaint,
- 23 correct?
- 24 A. Yes. Well, I don't remember exactly what
- 25 the stamp was, if it's the same as a time stamp,

Page 57

- 1 where Micron Technologies is going to be the 2 defendant, so it fits the criteria that CNS wanted
- 3 you to look to to report on.
- 4 Okay? Are you following me?
- 5 A. Yes.
- Q. And the person who was going to file that
- 7 complaint would hand it to the district court
- 8 clerk, right?
- 9 A. Yes, I believe so.
- 10 Q. And do you have an understanding of what
- 11 process the district court clerk would go through
- 12 before saying "Yes" and stamp it with a stamp to
- 13 be filed?
- 14 A. I don't know what they go through.
- 15 Q. What you do know is once those complaints
- 16 were filed and stamped by the district court
- 17 clerk, they would create a docket list of them?
- 18 A. Yes.
- 19 Q. And then a few times a day, at your
- 20 request, they would print out a docket list of
- 21 those filed documents?
- 22
- 23 Q. And they would then hand you that docket
- 24 list?
- 25 A. Yes.

Page 55

15 (Pages 54 - 57)

(136 of 297), Pages 136:29f. 29706903:3406697, 03/96/20260 Pkt Fintry: 12018, 1209 136 24 2979

Catherine Valenti November 8, 2022

1

- 1 but, yes, this would be the one identifying it.
- Q. But it was a stamp that told you, "Hey,
- 3 this is an official court document; it's been
- 4 accepted into the court filing"?
- 5 A. Yes.
- 6 MR. FETTERLY: Objection; vague and 7 ambiguous, overbroad, lacks foundation, calls for
- 8 a legal conclusion.
- 9 Q. (BY MS. DUKE) Your answer was "yes"?
- 10 A. As far as I know, yes.
- 11 Q. Now, was there ever a time when you were
- 12 at the courthouse doing your work where there was
- 13 a line of people, where you'd actually go to the
- 14 people that were standing in line to file
- 15 something and ask to see what was in their hands?
- 16 A. No.
- 17 Q. And why wouldn't you do that?
- 18 A. It wasn't part of my job. I only wanted
- 19 the ones that were filed.
- Q. Why did you only want the ones that had
- 21 actually been filed?
- MR. FETTERLY: Objection; vague and
- 23 ambiguous, overbroad, calls for a legal
- 24 conclusion.
- 25 THE WITNESS: Those were the only

Page 58

- 1 4
- 1 ones -- why would I report on something -- I 2 wouldn't report on something that hadn't been
- 3 filed yet in the legal system.
- 4 Q. (BY MS. DUKE) And why do you believe as
- 5 a reporter for CNS you would not want to report on
- 6 something that has not yet been filed in the
- 7 actual court record?
- 8 MR. FETTERLY: Objection; vague and
- 9 ambiguous, overbroad, misstates testimony, calls
- 10 for a legal conclusion.
- 11 Q. (BY MS. DUKE) Go ahead.
- 12 A. I would not want to report on something
- 13 unless it was already in the legal system. That
- 14 was my job.
- 15 Q. Well, and when you say "the legal
- 16 system" -- you actually used the words.
- 17 And let me go back because there's an
- 18 objection that I'm misstating your testimony, so
- 19 let me go to the realtime and make sure that we're
- 20 clear on this.
- And when you're sitting there, no one is
- 22 asking you any questions or sending you any
- 23 information; is that correct?
- A. Right now?
- 25 Q. Correct.

- A. Yeah, nobody is sending me anything.
- 2 Q. Okay. And throughout this deposition, no
- 3 one has been emailing you or texting you as to
- 4 your responses; is that correct?
- 5 A. Correct.
- 6 Q. All right. So what we had been talking
- 7 about is that you had said to a question I asked
- 8 you, I said, "Why did you want the ones that had
- 9 actually been filed?"
- 10 And let me go a little bit above that. I
- 11 asked, "Was there a time when you were at the
- 12 courthouse doing your work where there was a line
- 13 of people where you'd actually go to the people
- 14 that were standing in line to file something and
- 15 ask to see what was in their hands?"
- Do you remember that line of questioning?
- 17 A. Yes.
- 18 Q. And you had said, "No, I wouldn't want to
- 19 do that because that wasn't part of my job. I
- 20 only wanted the ones that were filed"; is that
- 21 correct?
- 22 A. Correct.
- Q. And I then said, "Well, why would you
- 24 only want the ones that had actually been filed?"
- And after objections by Mr. Fetterly, you

Page 6

- 1 said, "Those were the only ones -- why would I
- 2 report on something -- I wouldn't report on
- 3 something that hadn't been filed yet in the legal
- 4 system."
- 5 Do you recall that testimony?
- 6 A. Yes.
- 7 Q. And so my question for you is why would
- 8 you not want to report on something in your role
- 9 as a CNS reporter that had not yet been filed in
- 10 the legal system?
- 11 A. In my own particular role, my job was to
- 12 report on filed cases and put them into our
- 13 reporting program.
- Q. And is that still your job at CNS today?
- 15 A. Yes.
- 16 Q. Your job is to only report on filed
- 17 cases?
- 18 A. My job is, yes.
- 19 Q. Now, we talked about the Ada County
- 20 court -- we talked about the Ada County court
- 21 process where you would come when they were still
- 22 in the paper filing stage and they would actually
- 23 provide you with the docket report at your
- 24 request, right?

25 A. Yes.

Page 61

(137 of 297), Pages 1 37:29f. 29F069;03406697,03/96/20260. Qkt Fintry: 12018,1299 p 137 26 2979

Catherine Valenti November 8, 2022

- 1 Q. Was there any other county that you did
- 2 that with in the state of Idaho back when they
- 3 were all filing electronically -- or filing paper
- 4 copies?
- 5 A. Yes.
- 6 Q. Which ones?
- 7 A. I would visit Canyon County once a week.
- 8 And I would visit Owyhee, Elmore, Gem, Washington,
- 9 and Payette Counties once a month.
- 10 Q. And same questions for those. When you
- 11 would go to Canyon County one time per week, I'm
- 12 assuming, then, that you're getting a week's worth
- 13 of docketed complaint filings from the clerk?
- 14 A. Yes.
- 15 Q. And you're then going through to
- 16 determine whether you want to see one of those
- 17 filed complaints so that you can determine whether
- 18 you want to report on it?
- 19 A. Well, actually in Canyon County, they
- 20 just gave me all of the file folders.
- 21 Q. Okay.
- 22 A. So I apologize if -- it was a long time
- 23 ago. I'm trying to think back.
- Q. No worries. So Canyon County, they would
- 25 actually give you the file folders, meaning the

Q. And when you say "stand there with it,"

- 2 what are you referring to?
- 3 A. I would stand at the counter and look
- 4 through it at the counter.
- 5 Q. And when you're saying you would stand
- 6 and look at the counter, you'd look through it,
- 7 you're talking about the actual court filing?
- 8 A. Yes. I can't remember if any of them
- 9 actually had a docket filed. They may have. That
- 10 was a while ago. I think one of the counties -- a
- 11 couple counties I might have been able to go into
- 12 a room with the files to look at them, but it was
- 13 all pretty much the same process.
- 14 Q. And again, no matter what the county,
- 15 these were all filed complaints that you were
- 16 looking for?
- 17 A. Yes.
- 18 Q. Okay. How about the other counties, Twin
- 19 Falls, Kootenai, Nez Perce, you know, all
- 20 the -- we have 44 of them, so how about the other
- 21 counties? How would you report on those counties
- 22 prior to going electronic?
- 23 A. I would just do a docket report. We had
- 24 another person that would send me the dockets, and

Kootenai County, I believe there was a

25 I would include that.

Page 64

- 1 actual case file?
- 2 A. Yes.
- 3 Q. And then you would review the filed
- 4 complaints within that case folder, get the
- 5 information you needed, and if you wanted, also
- 6 obtain a copy?
- 7 A. Correct.
- 8 Q. And you did that process with Canyon
- 9 County up until they went electronic?
- 10 A. Yes.
- 11 Q. Now, once you then moved to Owyhee
- 12 County, Elmore, Gem, Washington, Payette, tell me
- 13 what your process was with those counties that you
- 14 would visit once a month.
- 15 A. The same basic thing. I would request
- 16 certain of the filings from the last filing case
- 17 number that I had reported on so that I wouldn't
- 18 miss any, and they would give me the ones to look
- 19 through.
- 20 Q. Would they actually give you the actual
- 21 court file, just like Canyon County would? Or
- 22 would they give you a docket sheet like Ada
- 23 County?
- A. Yes, I would just stand there with it and
- 25 look at it with those smaller counties.

- 2 reporter that lived in Washington that could go
- 3 over there once a week and do the reporting.
- 4 Q. And then you would report on it?
- 5 A. Yes. And she would send it to me.
- 6 Q. Kind of like what the Montana people do,
- 7 where they go, they learn the information, and
- 8 then they forward it to you to report on?
- 9 A. Yes.
- 10 Q. So it sounds like before Kootenai County
- 11 went to e-filing, there was a Washington reporter,
- 12 probably in the Spokane area, that would go
- 13 over -- and do you know what their process was
- 14 with the Kootenai County clerk?
- 15 A. I don't know. Just collecting for me and
- 16 getting to me. And I think she was in Spokane,
- 17 but I'm not positive.
 - Q. Okay. I was making an assumption.
- 19 Do you know if she would receive the
- 20 actual court files or whether she would just get a
- 21 docket report of filed complaints?
- A. I don't know how she did it, but I did
- 23 get information from the full complaint.
- Q. And what was her name?A. I can't remember.

Page 65

Page 63

Page 62

1

18

(138 of 297), Pages 1 38:29f. 297069696363466997, 663/961/202560 Pkt Fintry: 12018, 12099 138 29 2979

Catherine Valenti November 8, 2022

- 1 Q. Does she still work for CNS?
- 2 A. I don't believe so, but I'm not positive.
- 3 Q. Would she email the information to you?
- 4 A. Yes.
- 5 Q. Would you still have those emails?
- 6 A. Either she would email or -- I can't
- 7 remember. Sometimes you can put it into the
- 8 complaint. I don't know if I would still have
- 9 them or not.
- 10 Q. Have you ever received what's called a
- 11 litigation hold from CNS about documents and
- 12 needing to preserve those documents?
- 13 A. Yes.
- 14 Q. And do you know when you received that
- 15 litigation hold?
- 16 A. For this one, I don't remember exactly
- 17 when.
- 18 Q. For this lawsuit?
- 19 A. Yeah, I don't remember when.
- Q. Okay. Do you know if it was back in 2016
- 21 or 2017?
- A. For this lawsuit, I don't think it was
- 23 that far back. But I really can't remember.
- Q. Would you keep a copy of a litigation
- 25 hold?

- 1 any of those types of counties?
- A. No. Because we couldn't get full
- 3 complaints from them. Nobody visited them.
- 4 Q. So until those counties went online with
- 5 online filing, there wasn't an effort by CNS to go
- 6 and learn what the district court filings that
- 7 would meet the criteria to report on, what those
- 8 were prior to electronic filing?
- MR. FETTERLY: Objection; calls for
- 10 speculation, misstates prior testimony, lacks
- 11 foundation.
- 12 Q. (BY MS. DUKE) And I don't want to
- 13 misstate your prior testimony, so let me ask it in
- 14 a way that hopefully doesn't do that. That's not
- 15 my intent at all.
- 16 For the counties where you yourself or
- 17 someone else with CNS who would then send you the
- 18 information, for those counties that didn't do
- 19 that, where you weren't going yourself or where
- 20 someone else wasn't going on CNS's behalf to send
- 21 you the information, would those district court
- 22 complaint filings get reported on prior to
- 23 electronic filing?
- 24 A. Just the docket reports. I would get a
- 25 copy of the docket reports.

Page 66

Page 68

- 1 A. Possibly.
- 2 Q. How would you go about looking and
- 3 determining whether you got a copy of the
- 4 litigation hold?
- 5 A. I would have to look through all the
- 6 emails that I had and the old emails that I had.
- 7 Q. And so look at your emails, let's talk
- 8 about that real quick.
- 9 Because it sounds like you would get
- 10 emails, then, from somebody that would report on
- 11 Kootenai County before Kootenai County went to
- 12 electronic filing.
- 13 A. I should have some, but I honestly don't
- 14 remember.
- 15 Q. No. And that's okay, Ms. Valenti. We
- 16 can have you take a look on a break and see
- 17 whether you have some of those so that we know --
- 18 that might provide the name of this person as well
- 19 that would have emailed you and what she was 20 mailing.
- 21 Other than Kootenai County's process,
- 22 we've got 44 counties. We've talked about a
- 23 handful of them.
- Any other process you would follow for,
- 25 like, Bonneville, Idaho Falls, Lewiston, you know, Page 67

- 1 Q. For every county?
- 2 A. Yes.
- 3 Q. It's my understanding that at some
- 4 point -- well, you tell me what that process was.
- 5 I think I know it because I've talked to folks
- 6 about it, but tell me about the docket reports
- 7 that you would get statewide.
 - A. How I would get them or --
- 9 Q. Who would provide them? When you started 10 getting them, what they included.
- 11 A. One of CNS's employees would go through
- 12 the Idaho repository and collect that information.
- 13 And so she would send me the docket, the reports
- 14 with the dockets on it. And I would --
- 15 Q. I'm sorry. What was that?
- 16 A. I would include them in my report.
- Q. Who was this CNS employee?
- 18 A. I know one of them was Jane Hall, and I
- 19 think her daughter, but I can't remember what her 20 name is.
- Q. Do you know where they reside?
- 22 A. No.
- 23 Q. When you say that they would go through
- 24 the Idaho repository and collect the information,
- 25 what do you mean "the Idaho repository"?

Page 69

18 (Pages 66 - 69)

(139 of 297), Pages 139:29f 2970690346097, 63/96/20260 Pkt Filty: 12/13/2096 139 26 3979

Catherine Valenti November 8, 2022

- 1 A. The old system that you could go online
- 2 and look at the different cases. But you get,
- 3 again, just the bare bones cases that were filed
- 4 that they put in there before iCourts.
- 5 Q. Right. And so pre-iCourt, the system
- 6 that the Idaho courts used, you could go onto that
- 7 Idaho repository and find newly filed complaints
- 8 on that repository?
- 9 A. Yes, I think that's how she did it.
- 10 Q. Do you know how often she would do that?
- 11 A. She went through every day, but I don't
- 12 know if she went through all the counties every
- 13 day. I don't know what her process was.
- 14 Q. For counties, did she report on these
- 15 even for the counties that you would get
- 16 information from?
- 17 A. No.
- 18 Q. This was only for counties where you or
- 19 the person from Washington were not getting the
- 20 information from the court clerks?
- 21 A. Right. Correct.
- Q. Would she, then, email you that
- 23 information?
- A. Yes. I think it was emailed.
- Q. And that's something you can check for

Page 70

- A. I did not track that, no.
- 2 Q. Do you know of anyone at CNS that tracked
- 3 that in the state of Idaho?
- 4 A. I don't know the answer to that.
- 5 Q. You're not aware of anyone; is that fair?
- 6 A. This is pre-iCourts?
- 7 Q. Yes.
- 8 A. Pre-electronic?
- 9 Q. Right.
- 10 A. I don't know.
- 11 Q. All right. So that we're clear and the
- 12 record's clear, you personally would go to Ada
- 13 County -- well, strike that.
- Let me set this line of questions up with
- 15 the following understanding, and that is this is
- 16 pre-electronic filing. Okay?
- 17 A. Okay.
- 18 Q. So pre-electronic filing, you would go to
- 19 Ada County every day -- every weekday, I should
- 20 say, and ask for a docket report, sometimes
- 21 multiple times a day, that identified newly filed
- 22 and docketed cases, correct?
- 23 A. Yes.
- Q. You would then go to Canyon County one
- 25 time a week and actually get copies of the actual

Page 72

- 1 us?
- 2 A. Um-hmm.
- 3 O. Yes?
- 4 A. Yes. I'm sorry. Yes.
- 5 Q. And do you know how long it took for,
- 6 let's say -- so let's use Bonneville County
- 7 because that's not one of the counties that you
- 8 would go into and it's obviously a large county in
- 9 Idaho.
- In Bonneville, do you know what the time
- 11 frame was from a newly filed complaint being filed
- 12 in Bonneville County courthouse, how long it would
- 13 take to then show up on the Idaho repository?
- 14 A. I don't know that.
- 15 Q. Did you do any kind of evaluation or
- 16 investigation into that?
- 17 A. I did not, no.
- 18 Q. Did CNS at any point in time ask for you
- 19 to tell them how long it took a newly filed
- 20 complaint, district court complaint in the state
- 21 of Idaho, prior to electronic filing, to be
- 22 included in the Idaho repository?
- A. No. They didn't ask me.
- Q. And that's not something you tracked,
- 25 correct?

- 1 court files that had been initiated or started
- 2 with a newly filed complaint?
- 3 A. Yes.
- 4 MR. FETTERLY: Belated objection.
- 5 Sorry, Keely, I want to get this in.
- 6 Belated objection to the phrase "docket"
- 7 as being vague and ambiguous and overbroad.
- 8 Q. (BY MS. DUKE) What do you understand
- 9 "docket" to mean?
- 10 A. Me?
- 11 Q. Yes.
- 12 A. The docket is just basic information
- 13 without a summary -- or without the case. So
- 14 plaintiff, defendant, date, case number.
- 15 Q. And do you understand docketed
- 16 info -- "docketed" means a court [sic] that has
- 17 been filed in a county's clerk's office and that's
- 18 then included in a case that's been opened?
- MR. FETTERLY: Objection; vague and
- 20 ambiguous, overbroad.
- You may answer.
- 22 THE WITNESS: I -- what do you mean, a
- 23 docket is?
- Q. (BY MS. DUKE) Yeah. So I guess tell me 25 what you understand a docket to be.

Page 73

19 (Pages 70 - 73)

(140 of 297), Pages 140:29f. 297069636346697, 603/06/202560 Pkt Fintry: 12018, 1209 Page 140 29 3979

Catherine Valenti November 8, 2022

13

- 1 Do you understand it to be documents that
- 2 have actually been filed and included in the
- 3 court's file?
- 4 A. It's something that has been filed, yes.
- 5 But a docket itself, I couldn't see the full
- 6 complaint.
- 7 Q. Right. And you understand a docket is
- 8 basically an index of documents that have been
- 9 filed in each case?
- 10 A. Yes.
- 11 Q. And you would receive a docket report for
- 12 newly filed cases in Ada County?
- 13 A. Yes.
- 14 Q. And then in Ada County you would then go
- 15 and actually be provided the court file itself for
- 16 documents that had been filed in that court file
- 17 and determine how to report and what to report?
- 18 A. Yes.
- 19 Q. In Owyhee, Elmore, Gem, Washington, and
- 20 Payette Counties, those you would go to once a
- 21 month, correct?

A. Yes.

22 A. Yes.

1

- 23 Q. And in those, either get a docket report
- 24 from the clerks or actually go into a room with
- 25 the actual court files themselves?

Page 74

- 17
- Q. And then in Kootenai County, you would
- 3 receive once a week a report from a Washington CNS
- 4 person who would send you the docket information
- 5 on newly filed complaints from Kootenai County?
- 6 A. The person that was covering Kootenai
- 7 County, which may or may not have been in
- 8 Washington, would send me the case summary. She
- 9 could visit the court, so she had more than just
- 10 the docketed report.
- 11 Q. And then it was your job to actually
- 12 report on the case summary she would send?
- 13 A. Yes. That was included in my report.
- 14 Q. Did CNS at any point in time tell you
- 15 that going to Canyon County only once a week was
- 16 not speedy enough for them with respect to
- 17 reporting on newly filed complaints in Canyon
- 18 County?
- 19 A. No. They never told me that.
- Q. At any point in time did CNS ever tell
- 21 you that going to Owyhee, Elmore, Gem, Washington,
- 22 and Payette Counties once a month was not timely
- 23 enough for them from a reporting standpoint?
- A. No. They didn't tell me that.
- Q. And let me ask that same question. I

- 1 like the way I phrased that better that time with 2 Ada County.
- 3 So at any point in time did CNS ever tell
- 4 you that going to Ada County once a day was not
- 5 timely enough for CNS from a reporting standpoint?
- A. I'm not sure -- I went once a day. I
- 7 don't know. I guess not, because I could only go
- 8 one time a day.
- 9 Q. And then with Canyon County, was there
- 10 any point in time when CNS told you that going to
- 11 Canyon County once a week was not timely enough
- 12 for them from a reporting standpoint?
 - A. No, they never told me that.
- 14 Q. And are you aware of CNS ever
- 15 communicating to you that you needed to be more
- 16 timely in reporting on Kootenai County cases prior
- 17 to them going to the electronic filing?
- 18 A. No, because I didn't -- I just took the
- 19 information she sent me and put it in my report.
- Q. Then last, on the docket reports that you
- 21 would receive from Jane Hall or her daughter, are
- 22 you aware of how frequently you would receive
- 23 those reports?
- A. They checked every day as far as I know,
- 25 and got them. If there was something to report on

Page 76

1 daily.

- 2 Q. And at any point in time, did CNS ever
- 3 tell you that your reporting on the counties
- 4 covered by the docket reports from Ms. Hall or her
- 5 daughter were not timely enough reporting done by
- 6 you?
- 7 A. No.
- 8 Q. Has CNS provided you with a time certain
- 9 by which, now that we have electronic filing, when
- 10 you should be reporting on something?
- 11 A. As soon as I can see it if I'm -- during
- 12 the weekday. Or I can see it online.
- 13 Q. But they haven't asked you to work after
- 14 hours to do so, correct?
- MR. FETTERLY: Objection; vague and
- 16 ambiguous, overbroad.
- MS. DUKE: So let me rephrase that so I
- 18 can have that clear.
- 19 Q. (BY MS. DUKE) CNS has not asked that you
- 20 work in the middle of the night to report on cases
- 21 that may be filed after 5:00 p.m.; is that
- 22 correct, on a weekday?
- A. They never asked me to work in the middle
- 24 of the night, that's correct.
 - Q. And has CNS ever asked you to work on a

Page 75

20 (Pages 74 - 77)

25

(141 of 297), Pages 141:29f.29f06803406997, D3:(UA/2A/260-QktFnty:11/14/28/2299141 25 3979

Catherine Valenti November 8, 2022

- 1 weekend so that you can report on anything that
- 2 was filed Friday late in the day or on Saturday or
- 3 Sunday?
- 4 A. No, they have not asked me.
- Q. Has CNS asked that you work on a holiday
- 6 like Christmas or Thanksgiving or Veterans Day,
- 7 Labor Day, whatever holiday it is, so that if
- 8 something were filed, it could be reported on more
- 9 quickly?
- 10 A. No, they have not.
- MS. DUKE: Okay. Why don't we go ahead
- 12 and take a break and let me look at my notes.
- 13 About five or ten minutes.
- Does that work for you, Ms. Valenti?
- MR. FETTERLY: Off the record.
- 16 THE VIDEOGRAPHER: So the time is
- 17 3:00 p.m., and we are off the record.
- 18 (Break taken from 3:00 p.m. to 3:15 p.m.)
- 19 THE VIDEOGRAPHER: All right. So the
- 20 camera is rolling. The time is 3:15 p.m., and we
- 21 are back on the record.
- 22 Q. (BY MS. DUKE) All right. Ms. Valenti,
- 23 we're back on the record from a break.
- 24 Did you have the opportunity to speak
- 25 with anyone over the break?

- 1 has been in place whether you're on a paper filing
- 2 or an electronic filing system in Idaho; is that
- 3 correct?
- 4 A. As far as I know, yes.
- 5 Q. You haven't been told otherwise?
- 6 A. Right. I haven't been told otherwise.
- 7 Q. And were you instructed that as part of
- 8 your job, you needed to comply with the directions
- 9 in the CNS Daily Reports Style Manual?
- 10 A. Yes.
- 11 Q. And part of that, it looks like, you
- 12 would look to -- do you have that with you, by
- 13 chance?
- 14 A. I have it on my computer. I can take a
- 15 look at it.
- 16 Q. Okay. If not, I can certainly pull it up
- 17 for you if that's easier.
- Do you have a preference?
- 19 A. I have it up right now.
- Q. Okay. If you'd take a look at page 3,
- 21 please.
- MS. DUKE: Jon, do you need me to pull
- 23 that up or do you have it?
- MR. FETTERLY: Please, can you please put
- 25 it up on your screen so we can all have it?

Page 78

- 2 Q. And did you have the opportunity to
- 3 correspond with anyone over the break?

A. No.

1

- 4 A. No.5 Q. Over the break did you look at any of
- 6 your emails to see if you were able to determine
- 7 whether you still had Jane Hall and her daughter's
- 8 emails that they would send you, and then the
- 9 Kootenai County gal?
- 10 A. I did not. I think they're probably
- 11 archived. And I might be able to get them later,
- 12 but not right now. And the daughter's first name
- 13 is Kayla. I do remember that.
- 14 Q. Okay.
- 15 A. It all comes back little by little.
- 16 Q. I get it. I appreciate that.
- 17 All right. So we're back on the record.
- Now, with respect to the CNS Daily
- 19 Reports Style Manual that you received and is
- 20 dated 2015 but you received in 2016 when you
- 21 started working for CNS, has that ever been
- 22 updated, to your knowledge, while you've been at
- 23 CNS?
- A. No, I've never gotten another update.
- Q. So this same CNS daily reporting manual

- 1 MS. DUKE: Absolutely.
- 2 MR. FETTERLY: Thank you.
- 3 Q. (BY MS. DUKE) All right. So we have
- 4 Exhibit 21 up. Let me go to -- all right. You
- 5 see here we're on page 3, "Docketing"?
- 6 A. Yes.
- 7 Q. All right. It says "Daily Courts."
- 8 Go ahead and read that paragraph to
- 9 yourself, and I'm going to ask you a few
- 10 questions.
- 11 A. Just the paragraph? Or the entire
- 12 section?
- 13 Q. Well, read that paragraph. But you
- 14 should probably read the exceptions too because I
- 15 think it relates to that first paragraph.
- 16 A. Okay.
- 17 Q. All right. So the first paragraph on
- 18 page 3 of Exhibit 21 under "Docketing," what is
- 19 that referring to?
- A. I believe that one is just cases that we
- 21 don't have full text, so it's just the docket
- 22 report. That would be something I couldn't see
- 23 the full text.
- Q. And by "text," you mean the filed
- 25 complaint?

Page 81

Page 80

21 (Pages 78 - 81)

(142 of 297), Page 14221-297668034D697,D3/9A/2A260DktFnlg:11918/229P118285

Catherine Valenti November 8, 2022

2

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- A. Correct.
- 2 Q. So what are they telling you to do in
- 3 situations where you know you want to report on
- 4 them but you don't have all the available
- 5 information in the first docket report? What does
- 6 the 90 percent mean?
- A. Well, on this one, I'm not sure about the
- 8 90 percent. I check it all the time until I find
- 9 it. But maybe they're talking about ones that you
- 10 can't get a full complaint for. I report into my
- 11 program; I put all of the docket reports in there.
- 12 If I don't have a full text for the case, I wait
- 13 until I do and then I publish that.
- 14 Q. Now, today, now that we're in e-filing
- 15 world, which has brought us all here together, how
- 16 do you -- tell me what docket reports you're
- 17 looking to that you then go and look at what
- 18 copies of complaints you want and how you look at
- 19 that process.
- 20 A. I can't determine it from the docket
- 21 report. If I want a copy, I have to wait for the
- 22 full text. Unless I can look at the magic ball
- 23 and be able to tell what's important, I have to
- 24 wait for the full text.
- 25 Q. And so I understand that. So what do you

1 receive right now for, let's say, Ada County under 2 the new e-filing -- so under the e-filing system,

4 identify what it is you want to look to?

3 what do you receive now from Ada County so you can

A. Is that when I go into the courthouse?

Q. Correct. Yeah. What are you getting

7 from Ada County? Are you getting a docket report

A. No. I go onto the iCourts program at the

Page 82

24 is there, like, a button you'd hit that then says,

25 "Hey, here's all the district court cases"?

- 2 that. And usually what comes up is district court
- 3 cases. Once in a while, because of whatever they
- 5 the beginning, but I easily can see all the

1 going to report on that same day?

8 11/7/22 Big Sky Report?

11 those once I sort them.

16 at a time at the kiosk.

21 in my complaints program.

13 court cases?

you -- like, let's take yesterday's report.

7 to determine what it is you reported on in the

A. I look -- first of all, I can sort the

10 cases by district court cases, so I look at all

Like today, I know you're obviously here

3 so somebody's probably covering it, but how would

So if we're looking at the 11/7 report,

6 what process would you have gone through yesterday

Q. Okay. You can sort by state and district

A. Yes. You just hit "Location," and it

And then I look at all of the district

15 will sort by the -- I go by 100s, so I look at 100

18 court cases first, make sure that I have or -- see

19 if I have or have not reported on them. And I

20 open them all up to see if I need to report on it

Q. And when you're looking at this, the 23 kiosk and you're filtering district court cases,

- 7 I also go through numerically after I'm
- 8 done to make sure I check off all the ones I don't
- 9
- 10 kiosk. 10 Q. And is that just Ada County that you're
- Q. And why do you do that rather than get a 12 printed-out docket report from the Ada County
- 13 clerk like you used to under the filing system?
- 14 A. It's much easier for me and for the clerk
- 15 and saves paper. I can see everything from
- 16 iCourts that I need to see.
- 17 Q. To log onto iCourt, did you have to
- 18 register as a user?

8 like you used to?

- 19 A. Not when I'm at the kiosk, no.
- 20 Q. When you're at the kiosk, you can just
- 21 get on?

6

9

11

- 22 A. Correct. It's public information.
- 23 Q. And so you go to the kiosk at Ada County.
- 24 And tell me, then, for Ada County cases, what is
- 25 your process to then determine what it is you're

- 1 A. It's the location field. So you click on
- 4 do, there's another county that they throw up at
- district court cases.
- need.
- 11 looking at, or is that statewide?
- 12 A. Statewide. I look at each county
- 13 separately.
- Q. And you're able to access all of that
- 15 information at the Ada County Courthouse for
- 16 statewide district court filings?
- A. Yes. 17
- 18 Q. All right. So once you've sorted it by,
- 19 let's say, Ada County and now it's by district
- 20 court, what do you actually see that tells
- 21 you -- is it like the old docket sheets you would
- 22 give that would give party name, you know, type of
- 23 case? Like, just tell us what information you
- 24 were getting.
- 25 A. When I first look at them, I don't get

Page 85

Page 84

(143 of 297), Pages 243:22f-297668034-06697, D3/96/2A260-0ktFnlly: 129:54/2299-268 243979

Catherine Valenti November 8, 2022

6

8

- 1 very much information with the list. So when I
- 2 click on it, it brings me to the docket report,
- 3 basically. It doesn't tell you what the case is
- 4 about most of the time. Sometimes it will say,
- 5 you know, "debt collection" or something. And
- 6 then I have to click on it to open it further.
- And when I click on it then, I see the
- 8 first page of what I'm looking for, and I can open
- 9 it up fully to see the rest of the report.
- Q. Okay. So let me stop my screen share
- 11 real quick. And let me just grab yesterday's 12 report.
- 13 All right. Let me send you -- I'll just
- 14 share what's in my email inbox from yesterday.
- 15 So this is the CNS report dated
- 16 November 7th, 2022.
- Do you see that? 17
- 18 A. Yes.
- 19 Q. So let's go to Ada County here. It looks
- 20 like there were, what, one, two, three,
- 21 four -- five cases you reported on at Ada County.
- 22 So that first list that you're talking
- 23 about, if you're looking at Ada County, are you
- 24 looking at a list of just newly filed district
- 25 court cases that you then click on to actually get

that's how I sort through. Q. And when you say "01 is the designator,"

1 The 01 is the designator; 22 is the year. And

- 3
- does that mean district court?
- 5 A. That's Ada County.
 - Q. Ada County, okay. So 01 is Ada County.
- 7 And then 22 is the year.
 - And then it says 16. What's that?
- A. So that is the case number. So if I want
- 10 to look at -- if I want to look at a certain
- 11 block, which I look at by hundreds, I would put in
- 12 166 asterisk. And when I put in the asterisk, it
- 13 will automatically give me all of the files, 100
- 14 block for that.
- Q. Oh, I see. Okay. So if you're looking 15
- 16 at this -- I think I'm understanding what you're 17 saying now.
- 18 So the "16672" means -- does that mean
- 19 it's the 16,672nd case filed in Ada County?
- 20 A. Yes, in civil court.
 - O. For '22?
- 22 A. Right.

21

- 23 Q. Okay. And so then obviously 16676,
- 24 you'll look at these in hundreds.
- And then out of the hundreds that you

Page 88

- 1 the docket information?
- A. Yes. All of them -- some are older
- 3 depending on how big the county is, but, yes, all
- 4 these -- I look at -- 166,000, so that's what I
- 5 would see. And then I pull out the district court
- 6 cases to look at them.
- Q. Okay. And when you say "166,000," that's 7
- 8 under the Experian Data Corp --
- A. Sorry, 16,000. I'm way over. 16,772.
- 10 So I look at -- it would be 1-6-6 and then an
- 11 asterisk, and it will just give me the 100s for 12 that.
- 13 It's kind of confusing to explain.
- 14 Basically I look at up to 100 at a time. That's
- 15 all the database will let me see.
- Q. But what's the "16" mean? I'm just 16
- 17 trying to understand.
- 18 In that line there that says "11/7/2022,
- 19 CV01-22-16672," is the 16 you're talking about
- 20 before the 672?
- 21 A. I want to sort it, and I want to look at
- 22 just the ones that fall within that 100 range, so
- 23 166 is what I would be looking at.
- 24 And it would go from 16600 to 16699 if
- 25 they are filed that -- maybe that explains better.

- 1 looked at, based on the CNS Daily Reports Style
- 2 Manual, there were five of which you believed CNS
- 3 would want you to report on in the Big Sky Report
- 4 on November 7th for Ada County, correct?
- 5 A. Yes.
- Q. Got it. So when you get this list, are 6
- 7 you basically -- like if I were to look
- 8 at -- let's look at these two because they're back
- 9 to back.
- 10 Stephanie Guyon was busy. She was an old
- 11 law school classmate of mine.
- 12 All right. So 16276 and 16677, what you
- 13 first see is a list of them.
- 14 So then I'm assuming in the matter of
- 15 Idaho Attorney General vs. T-Mobile, that would be
- 16 in a list right above in the matter of Idaho
- 17 Attorney General vs. Experian, that would be on a
- 18 list right above it; is that correct?
- 19 A. Most of the time they're in numerical
- 20 order. Once in a while they're not, depending on
- 21 when they're filed.
- 22 Q. And then what you'll do -- how do you
- 23 then know to go and say, "Oh, I do want to look at
- 24 16676"?
- 25 A. I click on it. If it's a civil district

Page 89

(144 of 297), Pages 144:29f. 297069034-6697, 03:406/20260-2kt Finter: 12/14/29p 144 25 3979

Catherine Valenti November 8, 2022

- 1 court case, I always check it.
- Q. Okay. So anytime it's a CV01, you're
- 3 going to click on it to see if it meets the
- 4 criteria that CNS has provided to you as to what
- 5 you report on daily through the CNS Daily Reports
- 6 Style Manual?
- 7 A. Yes.
- 8 Q. So how many do you think you looked at in
- 9 District Court of Idaho yesterday and then
- 10 obviously only had five that meet CNS's criteria
- 11 for Ada County?
- 12 A. I do not remember how many I looked at
- 13 for Ada County.
- 14 Q. Is it typically hundreds or tens?
- 15 A. Not typically hundreds, but it's -- I
- 16 would have to look back, but it's usually at least
- 17 50 new cases that I look at and sort through.
- 18 Sometimes more. It depends on the day. Sometimes
- 19 it's not very busy.
- Q. Okay. Now, when you do click, let's say,
- 21 on this Done-Rite Tree Company vs. Gary Butcher,
- 22 when you do click on that one, number 16653, what
- 23 does it take you to at that point? Does it take
- 24 you to the docket report like you used to get?
- 25 A. Yes, it's a docket report.

1 specific.

- 2 At the bottom it has more of the
- 3 information of when it was filed and when it
- 4 was -- well, the top when it was filed, the bottom
- 5 is when the payment was made, which that I have
- 6 nothing to do with. I just -- I don't track that
- 7 as far as payment.
- 8 Q. When you say the payments made -- strike 9 that.
- 10 When you say the payment made, you mean
- 11 the filing fee?
- 12 A. The filing fee, yeah.
- 13 Q. Okay. When that's actually been made?
- 14 A. Yeah, that's what it looks like at the
- 15 bottom of the docket.
- 16 Q. And so with Done-Rite Tree Company, based
- 17 upon you clicking on the docket report, you're
- 18 then going to see the complaint that's been filed?
- 19 A. When I click on the document, there's
- 20 clickable sections, document summons, et cetera.
- 21 I ignore the rest. I just click on the document
- 22 or the complaint.
- 23 Q. Because sometimes -- I'm assuming what
- 24 you see on those dockets -- like, sometimes when
- 25 we file a complaint, we'll serve initial discovery

Page 92

- Q. Okay. And is that like the docket report
- 2 or similar to the docket report you used to get
- 3 back in the paper filing days?
- 4 A. It's got the same information on it that
- 5 I used to get.
- 6 Q. It has the same info?
- 7 A. Yes.
- 8 Q. Okay. And then when you look at that
- 9 docket report, how do you determine whether you're
- 10 going to report or not? Just walk us through
- 11 that.

1

- 12 A. A docket report, if it's -- I always have
- 13 to click and open up the case to determine whether
- 14 I'll report on it. If it's something that's
- 15 against a non-individual, again, through the style
- 16 manual with a few exceptions, I will report on
- 17 that in the program.
- 18 Q. And so when you click on the docket
- 19 report for Done-Rite Tree Company, what kind of
- 20 information does it give you in the docket report?
- A. It gives me the names of the parties, the
- 22 judge's name, the attorney's name if an attorney
- 23 has filed it.
- 24 It will say -- I can't remember the exact
- 25 wording, but, you know, district court, nothing

- 1 with it.
- 2 You're not worrying about any of those
- 3 notice of services or requests for depositions;
- 4 you're just looking at the complaint?
- 5 A. Correct.
- 6 Q. But the docket can sometimes show the
- 7 other things that were filed with the complaint?
- 8 A. Yes, like summons. I usually -- I don't
- 9 know if the others regularly see those, but yes.
- 10 Q. And then once you click on it, what does
- 11 "CNS Plus Download" mean?
- 12 A. CNS Plus Download will take you to our
- 13 main website.
- 14 Q. Right. So I'll click on that.
- 15 A. So if our subscribers would like a copy
- 16 of the complaint, they can get it at that time.
- 17 Q. And what I have to do is put in my email
- 18 address, my password, and then if that's
- 19 available, then we're charged a certain fee
- 20 through CNS to get that, correct?
- 21 A. Yes.
- Q. All right. So going back to CNS Plus
- 23 Download, why are some of them CNS Plus Download
- 24 and others aren't? Why are all these CNS Plus
- 25 Download but the tax appeal is not?

Page 93

24 (Pages 90 - 93)

(145 of 297), Page 14521-297669034DEG97,D3/QG/2A260DktFnlgy:11913/2999165263979

Catherine Valenti November 8, 2022

1

- A. I usually -- well, I always try to make
- 2 sure I upload something that someone might want to
- 3 look at, one of our subscribers might want to look
- 4 at. And so I use the CNS style manual, plus
- 5 particularly seeing what some of our subscribers
- 6 have downloaded to determine that.
- 7 But anything more newsworthy, defamation 8 cases, things like that would be ones that I would
- 9 include the copies.
- 10 Q. And how do you get the copy of the
- 11 complaint?
- 12 A. I request it from the court clerk and I
- 13 get it emailed to me.
- Q. Okay. And how long does it usually take
- 15 to get emailed to you?
- 16 A. From Ada County it's right away. Some
- 17 counties I have to go through a different process.
- 18 Q. Right. And we'll talk about those. But
- 19 Ada is fast?
- 20 A. Oh, yes.
- 21 Q. Like -- it sounds like -- do you just
- 22 give them a list of the ones you want and do they
- 23 just email them to you in one batch that day?
- 24 A. Right.
- 25 Q. Okay. What about other counties? What's

- A. Yes.
- 2 Q. Okay. And that sounds like a very
- 3 similar process that you follow there, even though
- 4 it's electronic, that you would follow back in the
- 5 paper document world, that you wanted a copy of
- 6 the complaint, you would ask, and Ada County would
- get you a copy?
- 8 A. That's right.
- Q. And then other districts, I'm assuming,
- 10 would get you a copy upon request following
- 11 whatever their practice was?
- 12 A. Correct.
- 13 Q. Now, if you look back -- let me stop that
- 14 share and go back to Exhibit 21.
- All right. Exhibit 21, so this is back
- 16 on page 3. And we were talking about the
- 17 docketing portion. It then says "Two exceptions:
- 18 Continue to look for and eventually report cases
- 19 that are (1) obviously newsworthy or important."
- So tell me how you know or what you've
- 21 been trained to -- by CNS as to what is obviously
- newsworthy or important.
- 23 A. It would be a complaint that any -- or
- 24 some subscribers might want to take a look against
- 25 corporations -- and this is for getting a copy of

Page 96

- 1 your process in other counties for actually
- 2 getting the complaints themselves that have been
- 3 filed?
- 4 A. It depends on the county. There is a
- 5 huge discrepancy or indifference between them.
- Some counties I can call and they take
- 7 payment over the phone and then they email that to
- 8 me with a receipt.
- Other counties I have to email my request
- 10 and they will get back to me when they are -- the
- 11 thing is ready.
- 12 And there are some that I have to
- 13 actually fill out an official form, attach it to
- 14 an email, and then they will get it back to
- 15 me -- you know, they'll let me know when payment
- 16 can be taken.
- Q. But at the Ada County computer, you can
- 18 see the complaint; you just don't have a copy of
- 19 it yet?
- 20 A. Right.
- 21 Q. And your purpose of getting a copy is so
- 22 that you can then include it with that? So the
- 23 subscriber will say, "Oh, I want a copy of that
- 24 complaint," and go to CNS Plus Download and go
- 25 ahead and pay for a copy of the complaint?
- Page 95

- 1 a complaint. I would still report on it.
- 2 Big corporations, Walmart, Target, if it's something like a wrongful death or if it's a
- 4 defamation, anything that is a little more
- newsworthy than, say, a car crash case.
- Q. And that's within your discretion based 6
- on your training with CNS as to what it is you're
- going to determine is newsworthy or important to
- 9 report on?
- 10 A. I'll report on anything that I should be
- 11 reporting on, which is against non-individuals.
- 12 It's getting a copy of the complaint that I have
- 13 more of a discretion in. But I will report on all
- 14 of the ones that are against non-individuals.
- Q. Oh, I see. Okay. So the docketing
- 16 portion just talks about getting the actual
- 17 complaints?
- 18 A. Right. I think what they're referencing
- 19 is if we can only see the docket, the complaint
- 20 isn't ready yet, we keep looking for it. That
- 21 doesn't happen like it used to because we can go
- 22 online and look as soon as it's ready.
- 23 Q. Sure. And when you say you can go online
- 24 and look as soon as it's ready, it's your
- 25 understanding that what you're looking at on the

25 (Pages 94 - 97)

(146 of 297), Pages 146:29f. 29706903:3406697, 03:406/20250 Pkt Fintry: 12018, 1209 p 146 29 3979

Catherine Valenti November 8, 2022

- 1 iCourt portal that you access in the Ada County
- 2 Courthouse are the district court complaints that
- 3 were filed during whatever time period you plug
- 4 into the system?
- 5 A. Well, I do it by cases, so it would be
- 6 time period. Because I report every day, and I
- 7 look for the cases for that day going by case
- 8 number so I don't miss any.
- 9 Q. And but what I'm asking is those are, as
- 10 you understand it, filed documents that are in the
- 11 court's case management system?
- 12 A. As I understand it.
- 13 MR. FETTERLY: Objection; vague and
- 14 ambiguous, overbroad, lacks foundation.
- 15 Q. (BY MS. DUKE) Well, what's your
- 16 understanding of what you're accessing when you're
- 17 at the iCourts portal in the Ada County Courthouse
- 18 when you're looking at a docket, you understand
- 19 those to be filed documents?
- 20 A. Yes.
- Q. And same questions that I asked you when
- 22 you were talking about the paper filing.
- 23 You're not charged with reporting on
- 24 unfiled documents, correct?
- 25 A. Correct.

Q. From there, you then generate the Big Sky

- 2 Report, correct?
- 3 A. From all of the reports, yes.
- Q. Once you generate the Big Sky Report, you
- 5 then also determine what complaints you want to
- 6 also have included for the CNS Plus Download, and
- 7 you've walked us through that process of how you
- 8 do that?
- 9 A. Yes. You're talking about the uploads,
- 10 the complaints that I get a copy of?
- 11 Q. Yes.
- 12 A. Yes. I can determine that usually when I
- 13 look at the case itself.
- 14 Q. Now, back in the old filing days where it
- 15 was paper filing, did CNS ever ask you to actually
- 16 go talk with people who were about to file
- 17 something about what they were going to file?
- 18 A. No.

Page 98

- 19 Q. And they haven't asked you to do that
- 20 under the new e-filing; is that correct?
- A. Correct.
- Q. All right. Now, if you look at what we
- 23 have up as Exhibit 21, page 3, second paragraph
- 24 under "Docketing," Section C, you'll see where it
- 25 says "Two exceptions."

Page 100

- Q. CNS isn't asking you to report on
- 2 documents that are not yet filed in the court
- 3 system, right?

1

- 4 A. If they're still in the customers' hands,
- 5 no, we don't report on that I know of. I've
- 6 never been asked to.
- 7 Q. And do you understand that sometimes when
- 8 something is submitted by a filer, that it will be
- 9 rejected and not filed?
- 10 A. I guess so. I'm not on that end of the
- 11 workflow, but I think that would be a court
- 12 answer.
- 13 Q. Well, has CNS ever asked you to report on
- 14 rejected attempted filings?
- MR. FETTERLY: Objection; assumes facts,
- 16 lacks foundation.
- 17 THE WITNESS: No, they have not.
- 18 Q. (BY MS. DUKE) What CNS has asked you to
- 19 do is to report on filed documents, correct?
- 20 A. Yes.
- Q. And that's what you do when you go to
- 22 iCourt; you are looking at dockets that then
- 23 provide a list of documents that have been filed
- 24 in that case?
- 25 A. Yes.

- 1 And number 2 is "or (2) were requested by 2 a client."
- What does that mean?
- 4 A. I am not positive if that is referring to
- 5 current or if it was when we could only see the
- 6 docket reports. It looks like it was -- because
- 7 at that time we can only see docket reports.
- 8 I can try to give you my best guess, but
- 9 I can't tell you for certain. But I think that's
- 10 what it refers to is docket.
- 11 Q. It refers to the docket reports?
- 12 A. And not the full summary. Because
- 13 obviously if the full case was there, we could see
- 14 it and report on it.
- 15 Q. Okay. Now, when you're at the Ada County
- 16 Courthouse accessing the iCourt portal, do you
- 17 plug in a web address to get there?
 - A. No.

18

- 19 Q. Tell me what it is you access, just so we
- 20 have an appreciation for that.
- A. When I go into court, I click into the
- 22 kiosk and click on "iCourts." There's a little
- 23 icon there.
- And then from there, I would -- there's
- 25 different options. I would go for the smart

Page 101

26 (Pages 98 - 101)

(147 of 297), Pages 147:29f. 297069636346697, 663/96/202560 Pkt Fintry: 12013/2299 147 25 2979

Catherine Valenti November 8, 2022

- 1 search, and then I could put the numbers in.
- 2 Q. How many kiosks are available?
- 3 A. There are -- there's four in the room I
- 4 usually go in. In the other side of the hallway,
- 5 there's two more. And I think there's a couple in
- 6 the center of the main area.
- 7 Q. Has there been a time when they've all
- 8 been taken and you needed to wait?
- 9 A. No. They actually remodeled the rooms
- 10 and put the computers in there, so we have
- 11 actually more access now for the computers.
- But in the past, there were times when
- 13 you didn't really have to wait, but some people
- 14 would have to go into the other room to get the 15 reports.
- 16 Q. What do you mean by "some people" --
- 17 A. Well, like, if a member of the public --
- 18 if we were using the computers and the kiosks,
- 19 they would have to use -- there's a civil side,
- 20 which is what I'm on. They would have to go into
- 21 the other room and use the other computer there.
- Q. Oh, because -- sorry, go ahead.
- 23 A. I'm sorry. I don't ever remember not
- 24 having a computer to work on since they've started
- 25 doing this.

Page 102

- Page 10
- 1 Q. And is every single clerk's office --
- 2 like, you're able to access every county filing
- 3 for district court at that kiosk?
- 4 A. Yes, all the counties, yes, I can do
- 5 that.
- 6 Q. Any that you have to do manually or do
- 7 another process other than what you've described
- 8 you do now by going to Ada County and using the
- 9 kiosk?
- 10 A. No, I can see all of the counties from
- 11 Ada County.
- 12 Q. Now, you would agree that the accuracy of
- 13 your reports is of the utmost importance, correct?
- 14 A. Yes.
- 15 Q. And part of what you're doing with those
- 16 reports is you are reporting on cases that have
- 17 actually been filed in the state of Idaho,
- 18 correct?
- 19 A. Yes.
- 20 Q. And you would not want to be inaccurate
- 21 about whether a case had in fact been filed,
- 22 correct?
- A. I'm not sure I understand. Inaccurate
- 24 about whether it had been filed?
- 25 Q. Yeah. You don't want to report on cases
 Page 103

- 1 that have not yet made its way into the court's
- 2 filing system, correct?
- 3 A. Correct.
- 4 MR. FETTERLY: Objection; vague and
- 5 ambiguous, overbroad, lacks foundation.
- 6 Q. (BY MS. DUKE) Well, you would not want
- 7 to report on district court complaints that had
- 8 not yet been docketed by the clerk's office before
- 9 reporting on them, correct?
- 0 MR. FETTERLY: Objection; vague and
- 11 ambiguous, lacks foundation, calls for legal
- 12 conclusion.
- 13 Q. (BY MS. DUKE) Go ahead.
- 14 A. I just report on the ones that show up on
- 15 the kiosk.
- 16 Q. And the ones that show up on the kiosk
- 17 are docketed complaints, correct?
- 18 A. Yes.
- 19 Q. And by "docketed complaints," you
- 20 understand that that means they are complaints
- 21 that have actually been filed into the court's
- 22 filing system?
- 23 MR. FETTERLY: Objection; vague and
- 24 ambiguous, overbroad as to "actually filed,"
- 25 potentially calls for a legal conclusion.

Page 104

- 1 Q. (BY MS. DUKE) Is that correct?
- 2 A. Yes, that's correct.
- 3 Q. I guess let me ask it this way: Have you
- 4 been asked to include in your Big Sky Report,
- 5 since e-filing's been used in the state of Idaho,
- 6 to report on cases that have not yet been filed in
- 7 the court's case management system?
- 8 MR. FETTERLY: Objection; vague and
- 9 ambiguous, overbroad, lacks foundation, assumes
- 10 facts.
- 11 You may answer.
- 12 THE WITNESS: I have -- so you're
- 13 asking -- I'm sorry. Start over again.
- I only report on the ones that have been
- 15 filed as far as I know because those are the only
- 16 ones I see on the computer, if that answers your 17 question.
- 18 Q. (BY MS. DUKE) Do you have any idea what
- 19 the press review queue is by Tyler Enterprises or
- 20 Tyler Technologies?
- 21 A. I am not positive. I assume -- if I can
- 22 assume -- that it is something that allows
- 23 immediate access when something is first filed.
- Q. Okay. Do you know whether that's what

25 the Tyler Technologies' press review queue is?

Page 105

27 (Pages 102 - 105)

(148 of 297), Pages 148:29f. 29F069034-6697, 03:40A/2A260-08kt Fnter: 12/14/2999 148 25 3979

Catherine Valenti November 8, 2022

- 1 A. Just from what I have read, possibly that 2 would give us immediate access.
- 3 Q. And what you've read is the complaint; is
- 4 that correct?5 A. Yes.
- 6 Q. And is that your basis for your
- 7 understanding of what the press review queue is?
- 8 A. That's my understanding, yes.
- 9 Q. Have you been asked by CNS to in any way
- 10 look at the press review queue as part of your job
- 11 reporting on the Big Sky Reports -- well, strike 12 that.
- 13 Do you know whether the state of Montana
- 14 has the press review queue?
- 15 A. I don't know.
- 16 Q. Do you know whether the state of Wyoming
- 17 has the press review queue?
- 18 A. No, I don't know.
- 19 Q. Do you know whether the state of Idaho
- 20 has the press review queue?
- 21 A. I don't think so. I don't know for sure.
- 22 I don't know if it's available, but I can't access
- 23 it.
- Q. And it's your understanding that the
- 25 press review queue would provide access to filed

Page 106

- 1 provided, at the portals, an access to the
- 2 computer system, which then provides you the
- 3 docketing sheets for each case for the district
- 4 court that you hone your search into, correct?
- 5 A. Yes.
- 6 Q. And from those docketing sheets, you then
- 7 are able to access the complaint to review it to
- 8 see if it's something you're going to report on?
- 9 A. Right. Yes.
- 10 Q. And has there ever been, to your
- 11 knowledge, a delay in your ability to access one
- 12 of those docketed complaints through the iCourt
- 13 portal?
- MR. FETTERLY: Objection; vague and
- 15 ambiguous, overbroad.
- 16 You may answer.
- 17 THE WITNESS: Well, if it's docketed
- 18 almost always, if I can see it on the docket
- 19 report. Almost always I can see the complaint.
- 20 The exceptions would be once in a while there's a
- 21 short delay. I don't know if it's
- 22 because -- between the time that they actually
- 23 receive and enter it in. I don't know how that
- 24 works.
- 25 And sometimes there's more than a day

Page 108

- 1 complaints?
- 2 A. Yes.
- 3 Q. Do you have any understanding or
- 4 knowledge whether the press review queue would
- 5 only include prefiled complaints?
- 6 MR. FETTERLY: Objection; vague and
- 7 ambiguous as to the term "prefiled," overbroad,
- 8 lacks foundation.
- 9 THE WITNESS: I don't know.
- 10 Q. (BY MS. DUKE) When I use the phrase
- 11 "prefiled complaint," what does that mean to you?
- 12 A. If it's not filed, then someone hasn't
- 13 taken it to the court to be entered. That's what
- 14 it means to me.
- 15 Q. When it's not filed, it's not something
- 16 that's in the court's case management system; is
- 17 that fair?
- 18 MR. FETTERLY: Objection; vague and
- 19 ambiguous, overbroad, lacks foundation, calls for
- 20 speculation, calls for legal conclusion.
- Q. (BY MS. DUKE) Would you agree?
- A. I don't know how -- what the process is
- 23 at the Ada County -- or any of the courthouses, so
- 24 I'm not sure I can answer that.
- Q. Well, what you know is that you're

- 1 delay of seeing the full report, if it's a pro se
- 2 filer and they are not doing it electronically and
- 3 they haven't scanned it in yet.
- 4 Q. (BY MS. DUKE) Got it. And those are the
- 5 times when you understand there are times when the
- 6 complaint's not available when you're looking at
- 7 the docket on the iCourt portal?
- A. Right.
- 9 Q. Those times when you're only looking at
- 10 the docket, let's say it's a pro se person who is
- 11 suing Micron and you don't have the complaint in
- 12 there yet.
- Would you still be able to report on that
- 14 case via the docket entry?
- 15 A. Yes.
- 16 Q. And tell me why that is.
- 17 A. I can see the basic information of the
- 18 docket. I can see the defendant and the
- 19 plaintiff, that it's pro se. I can't tell you
- 20 what the complaint is about, but I can see the
- 21 basic information.
- Q. So access to the complaint in that
- 23 circumstance isn't necessary for your reporting
- 24 abilities, correct?
- 25 A. It's not necessary to report the docket

Page 109

28 (Pages 106 - 109)

(149 of 297), Pages 249:29f-200068034-06697, 03/96/2A260-0ktFnley: 129:54/2299-268 863979

Catherine Valenti November 8, 2022

2 ahead.

- 1 part, but I would need to see the complaint to be 2 able to do the full report.
- Q. And the docket part for any of these 3
- 4 complaints would include filer, plaintiff name,
- 5 defendant name, judge name, and I'm assuming a
- 6 brief description like legal malpractice, let's 7 say?
- 8 A. Not always.
- Q. Okay. And that's when you have to go to
- 10 the complaint itself?
- A. Right. 11
- Q. Have you ever had a subscriber ask for 12
- 13 certain dingers or keywords that they want flagged
- 14 for reporting?
- A. I haven't, no. 15
- 16 Q. Are you aware of that ever happening?
- A. I am not. If anybody wanted that 17
- 18 particular one, maybe they need to ask for help
- 19 from CNS, because I don't handle that part of it,
- 20 if they're just asking for ones with certain
- 21 dingers.

1

- 22 Q. Let's look to page 14 of Exhibit 21.
- 23 I'll get there for you.
- Do you ever yourself use the "Specific
- 25 Terms and Dinger and Keywords"?

Q. Do you know how those -- oh, sorry. Go

- 3 A. If I don't already have it uploaded and
- 4 they would like a copy of it, or sometimes they
- 5 see it ahead of time, they will ask me for it.
- Q. And are they able to get there by going
- 7 to contact customer support at
- courthousenews.com/customer support?
- 9 A. Actually, my name and phone number and
- 10 email address is at the top of every report.
- Q. Okay. Where then they can call you, "Oh,
- 12 yeah, Cathy," and then specifically ask for that
- 13 copy from you?
- 14 A. Correct.
- 15 Q. Have there ever been times -- let's say
- 16 for the federal court system. Let's talk about
- 17 that.
- 18 Federal court, how do you report on
- 19 federal court here in the state of Idaho?
- A. I just do the same basic procedure and
- 21 get the copy of the complaint, take a look at it,
- and report on it, summarize it. At that time,
- almost all of them, unless they're removals or
- transfers, they will have a copy attached
- 25 automatically.

Page 110

Page 112

- A. Do I ever use that specific term?
- 2 Q. Correct. Like, do you need to reference
- 3 this sheet -- you'll see it here on page 14.
- A. Oh, yeah. 4
- 5 Q. And what are you using that for?
- A. For these keywords? When I first write
- 7 up the summary, I put keywords in there so that 8 subscribers can easily find out what the case is
- 9 about. And then I write the summary.
- 10 Q. And have you ever had a subscriber ever 11 request certain summaries from you or certain 12 types of cases?
- A. They request the complaints, but not, 13
- 14 like, summaries or dingers from me.
- Q. Well, when you say they've requested 16 complaints, have you had subscribers directly
- 17 reach out to you for copies of complaints? Or do 17
- 18 you mean just through the CNS download?
- 19 A. Well, if they see something and it
- 20 doesn't have a complaint on it, they will often 21 contact me. And then I can upload it to our
- 22 reports program so that they can download it.
- 23 Q. And that's subscribers reaching out to 24 you?
- 25 A. Yes. If I --

- Q. But when you say "the same basic 1
- 2 procedure," just describe for me, you know, what
- 3 you do to look at -- you know, filter through the
- 4 federal court docket.
- A. Oh, okay. Well, for the federal courts,
- when I look at them, I report on everything,
- 7 again, that is against a non-individual.
- There are a lot of times, though, federal
- courts will have a little more intense cases, and
- 10 so I report on anything that is newsworthy for
- 11 that. 12 I don't report on, like, pro se prisoner
- 13 cases, Social Security cases, student loans,
- 14 things like that, but it's the same idea. I just
- go through and any -- I would say almost all of
- 16 the federal court cases I will report on. Some I
- will not if it's just a car collision between a
- 18 defendant and a plaintiff and they're both
- 19 individuals.
- 20 Q. To report on federal court cases, you're
- 21 using the same training and process that CNS has
- 22 asked you to use through the CNS Daily Reports
- 23 Style Manual?
- 24 A. Yes. They're slightly different in what
- 25 they ask for. For instance, forfeitures I would

Page 113

29 (Pages 110 - 113)

Catherine Valenti November 8, 2022

- 1 do in USDC Courts, but I would not report on them.
- 2 I'd still track them but not report on them in
- 3 state courts.
- 4 So there are a few exceptions that are in
- 5 the manual.
- 6 Q. So when you go on, tell me what the
- 7 process is. What do you go onto for the district
- 8 court so that you can get your list of cases and
- 9 then click through? Is it a docketing process
- 10 like what you're talking about, and then you'll
- 11 click on the actual complaint once you see the
- 12 list of docketed cases?
- 13 A. Right. The cases are there, and they
- 14 have some basic information. Sometimes they pull
- 15 it with the auto track system into our report and
- 16 I can look at it from there, but I always do a
- 17 double-check and make sure I don't miss any.
- 18 So when I look at it on PACER, for
- 19 instance, they have just the docket part. And I
- 20 can click on anything that I want to see, which is
- 21 the -- I can tell -- if it's a prisoner complaint
- 22 that has no attorney, I don't have to report on
- 23 those.
- Q. So you have a list of the cases,
- 25 similar -- it sounds like very similar to what you

Page 114

- 1 those cases at all? Or is this all -- your entire
- 2 job is tasked with just providing the Big Sky
- 3 Report each day for new case filings that meet
- 4 CNS's Daily Reports Style Manual guidelines?
- 5 A. In the past I have followed some cases.
- 6 I don't do that now.
- 7 But if I see one that's particularly
- 8 newsworthy that we might want a write-up for, say,
- 9 to post on the website, I will send a copy of that
- 10 and the information to Chris Marshall.
- 11 Q. And how frequently do you believe you do 12 that?
- 13 A. Not really often. It just depends on the
- 14 day the cases are filed. So I -- it's not very
- 15 often. Maybe once a week or twice a week. I
- 16 don't know.
- 17 Q. Where will you send those if you want to
- 18 report? What do you report them on?
- 19 A. If I want a report for --
- Q. Well, if you have an already filed case,
- 21 so you've done your Big Sky Report, but it's one
- 22 that you think "Oh, that's probably something we
- 23 may want to report on," you know, that there's
- 24 been a dismissal or whatever it might be, if you
- 25 do that, where do you report on it?

Page 116

- 1 have for state court, and then you're just going
- 2 to click on it to then get the additional
- 3 information from the complaint?
- 4 A. Right.
- 5 Q. And you understand that those are actual
- 6 filed complaints that you're looking at in federal 7 court?
- 8 MR. FETTERLY: Objection; vague and
- 9 ambiguous, overbroad, lacks foundation, calls for
- 10 a legal conclusion, all with respect to the phrase
- 11 "actual filed."
- 12 Q. (BY MS. DUKE) Well, let me ask again.
- Do you understand that those are filed
- 14 complaints that you're looking at on the federal
- 15 court docket system?
- 16 A. Yes.
- 17 Q. And again, you are not there to report on
- 18 unfiled complaints in federal court, correct?
- 19 A. Correct.
- Q. You are there to report on filed
- 21 complaints?
- 22 A. Correct.
- Q. Now, with respect to any of the reports
- 24 that we've looked at and the cases that you report
- 25 on each day, does CNS expect that you will follow Page 115

- 1 A. Okay. So if I'm thinking that it might
- 2 be something we want to write a story on? Is that
- 3 what you're asking?
- 4 Q. Yes.
- 5 A. I send the information to Chris Marshall.
- 6 Q. Do you write the stories yourself?
- 7 A. I don't now, no.
- 8 Q. Did you at some point?
- 9 A. I did a few times, yes.
- 10 Q. And why is it that you did write a story
- 11 a few times but haven't since?
- 12 A. Most of the time I'm pretty busy with all
- 13 of the work that I'm doing now.
- 14 Q. And then do you know what process
- 15 Mr. Marshall goes through to determine whether
- 16 there will be an actual press write-up by CNS on a
- 17 case that you believe deserves a write-up?
- 18 A. I don't know.
- 19 Q. And do you know how many he's actually
- 20 gone forward and actually written something up and
- 21 reported on?
- A. No, I don't know.
- Q. Has there ever been a time where there's
- 24 been an error in your Big Sky Report that you
- 25 needed to correct?

(151 of 297), Pages 151:29f-29f06803-4-06697, 03/96/2A260-0kt=ntry:12/13/229-0151 82 2979

Catherine Valenti November 8, 2022

- 1 MR. FETTERLY: Objection; vague and 2 ambiguous, overbroad, lacks foundation, calls for 3 speculation.
- 4 You may answer.
- 5 THE WITNESS: And by "error," what do you 6 mean by "error"? A typo?
- 7 Q. (BY MS. DUKE) Well, has there ever been
- 8 a time where someone has reached out and said,
- 9 "Hey, your Big Sky Report description is wrong"?
- 10 A. No.
- 11 Q. Has there ever been a time when someone's
- 12 reached out and said you needed to somehow modify
- 13 or change a Big Sky Report that you've done?
- 14 A. Yes.
- 15 Q. And tell me about those instances.
- 16 A. It was with an attorney's office when I
- 17 had a USDC case. And the person, the law firm
- 18 that was attached to it from the PACER program,
- 19 which is the USDC program, had the incorrect
- 20 attorney firm. So all I did was go into my
- 21 program and delete it out of there.
- 22 Q. Any other examples where you have been
- 23 notified by someone that they feel something is
- 24 inaccurate in your Big Sky Report?
- A. No, other than typos.

1 your answer there real quick. 2 So when you say you a

- 2 So when you say you assume the biggest
- 3 change would be that you would be able to see the
- 4 complaints sooner, is it your understanding that
- 5 you'd be able to see the complaints that had been
- 6 filed sooner?
- 7 A. If they were e-filed?
- 8 Q. Correct.
- 9 A. Yes, I would think so, yes.
- 10 Q. And meaning that you'd be able to see
- 11 them in the court's case management system sooner?
- MR. FETTERLY: Objection; vague and
- 13 ambiguous, overbroad, lacks foundation.
- 14 THE WITNESS: That's my understanding.
- 15 Q. (BY MS. DUKE) And meaning that you'd be
- 16 able to see them on the iCourt portal sooner?
- MR. FETTERLY: Objection; vague and
- 18 ambiguous, lacks foundation, calls for
- 19 speculation.
- THE WITNESS: I don't know if it's the
- 21 iCourt portal exactly, but wherever they would be,
- 22 that's where I would be able to see them sooner,
- 23 yes.

Page 118

- Q. (BY MS. DUKE) And again, you would only
- 25 be wanting to report on filed cases, correct?

Page 120

- 1 Q. Well, when you say "typos," you mean
- 2 somebody will actually call and say, "You have an
- 3 extra L in my name" or --
- 4 A. No.
- 5 Q. Nobody's called in -- it sounds like
- 6 other than that one complaint in the U.S. District
- 7 Court related to a law firm name being incorrect,
- 8 you have not had any similar complaints or issues
- 9 with any of the state court complaints you've
- 10 reported on in the Big Sky Report; is that
- 11 correct?
- 12 A. Yes.
- Q. Do you have any idea what the process
- 14 would be -- strike that.
- Do you have any idea how your work would
- 16 change if the press review queue was initiated in
- 17 the state of Idaho?
- 18 A. I haven't been told anything, but I'm
- 19 assuming that the biggest change would be I would
- 20 be able to see the complaints sooner. There
- 21 wouldn't be a delay. I would still follow the
- 22 same process as far as writing them up, and I'm
- 23 assuming that I would get training on anything
- 24 else I need to know.
- Q. And so when you say that -- let me read

- 1 A. Yes.
- 2 Q. Okay. All right. So let's take a look
- 3 here --
- 4 MR. FETTERLY: Keely, before we move on,
- 5 this seems like a good pausing point. Can we just
- 6 take a quick break?
- 7 MS. DUKE: Sure.
- 8 MR. FETTERLY: Just five minutes. And I
- 9 also wanted to -- off the record.
- 10 THE VIDEOGRAPHER: All right. So the
- 11 time is 4:11 p.m., and we are off the record.
- 12 (Break taken from 4:11 p.m. to 4:24 p.m.)
- THE VIDEOGRAPHER: All right. So we are
- 14 recording. The time is 4:24 p.m., and we are back
- 15 on the record.
- 16 (Deposition Exhibit No. 22 was marked.)
- 17 Q. (BY MS. DUKE) All right. Let me show
- 18 you Exhibit 22.
- 19 First of all, did you talk with anybody
- 20 on the break?
- 21 A. No, I did not.
- 22 Q. And did you communicate with anybody on
- 23 the break in written communications?
- 24 A. Nope.
- Q. All right. I'm showing you your

Page 121

31 (Pages 118 - 121)

(152 of 297), Pages 152:29f-297668034D6697,D3/96/2A260DktFnlly:129:54/2299135285979

Catherine Valenti November 8, 2022

- 1 declaration.
- Is this the declaration that you reviewed 2
- 3 in preparation for your deposition today?
- 4 A. Yes, I looked through that.
- Q. And tell me why it is you -- what your 5
- 6 understanding is as to why you put this declaration together.
- A. To explain what I do and how I do 8 9 reporting.
- 10 Q. Okay. Bear with me one second here.
- And after reviewing your declaration 11
- 12 here, which is marked as Exhibit 22, do you
- 13 believe that it is still accurate and truthful?
- 14 A. Yes.
- Q. I'm sorry. What? 15
- A. Oh, yes, the procedure is accurate. 16
- 17 O. Well, I mean the declaration.
- 18 A. Yes. Yes, it is.
- 19 Q. Okay. And so as you're under oath today, 19
- 20 you understand you were under oath when you
- 21 reviewed and ultimately signed this declaration? 21 looking.
- 22 A. Correct.
- 23 Q. You would agree that, as a result of your
- 24 coverage in the state of Idaho, that you were
- 25 thoroughly familiar with the press and public

- 1 access provided by the Idaho courts to the general 1 is that correct?
- 2 civil litigation complaints; is that correct?
- 3 A. At least for the public, yes, it was
- 4 correct. 5 Q. Why do you qualify that as to the public
- 6 versus the press?
- 7
- A. Well, I'm assuming that -- I'm looking at
- 8 what the public can see. I don't know if that is
- 9 lumped in with the press or not, so I can't answer 10 that.
- 11 Q. Okay. And why can't you answer that?
- 12 A. Because I look at the public kiosk and I
- 13 don't know if there's a separate press one that I
- 14 should be looking at or not. So I don't know.
- Q. Got it. And as you are familiar with the
- 16 public's access to general civil litigation 17 complaints provided by the Idaho courts, it's your
- 18 understanding that the public can go to the iCourt
- 19 portal and access the complaints that have been
- 20 filed, correct?
- 21 A. Yes, that's correct.
- Q. All right. If you go to paragraph 5, it
- 23 states there -- go ahead and read that to
- 24 yourself. I'm going to ask you some questions.
- 25 A. Okay.

Page 123

- Q. Why did you start tracking delays in the 2 Idaho district courts on a statewide basis in May
- 4 A. That's when I was asked to do so.
- 5 Q. That's what we talked about at the start
- 6 of your deposition; you were asked by CNS to start doing that?
- 8 A. Yes.

9

- Q. And to do so, you would begin each
- 10 morning by checking docketing information from the
- 11 remote access website.
- 12 Tell me what that is.
- A. I can look and see the docketed reports 13
- 14 from my computer at home. I can't see any of the
- complaints, but at least I can get started.
- Since I'm covering 44 counties and have
- 17 other work to do besides that, it's really nice to
- 18 have some of that done ahead of time before I go
- to court. So I fill in what I can at home.
- Q. Then you travel to Ada County to keep
- 22 And so when you look on your computer at
- 23 MyCourts at home, mycourts.idaho.gov, what you're
- 24 seeing is exactly what you're seeing on the iCourt
- 25 portal, just not with the complaint linked to it;

Page 124

- 2 A. That's correct.
- 3 Q. You then talk about a spreadsheet. So
- let me go to that so we can understand that.
- 5 Okay. Let me blow that up some. One second. Hopefully that will make it bigger.
- 7 Can you see that?
- 8 A. Yes, I can. Thanks.
- Q. Okay. So is this the spreadsheet that
- 10 you were talking about that you were asked to
- 11 start tracking in May of 2021?
- A. It is, although I have one for Ada County
- 13 and one for the rest of the counties. But this is
- 14 all the information I'm asked to track for on all
- 15 of them.
- 16 Q. I see. So this is just a blended version 17 of it?
- 18 A. Right. All the information is there, but
- 19 I think just for ease of use, it looks like.
- 20 Because I can see all of them on here.
- 21 Q. And so when I look at case number, I
- understand what that is. Nature of the case,
- collections, date docket online, date available.
- 24 Tell me, when you say "Date Docket
- 25 Online," what does that mean? Like, what are you Page 125

32 (Pages 122 - 125)

(153 of 297), Pages 153:21-25683:034-6697, D3(96/202660-2015); Pages 153:21-25/2294 153:21-2015

Catherine Valenti November 8, 2022

- 1 looking to?
- 2 A. That's when I open up iCourts and do my
- 3 searches. That's when I first see the docket. So
- 4 I can put that in there in the morning, for
- 5 instance.
- 6 And then when I get to court, if it's
- 7 available, which it almost always is, when I can
- 8 see the docket, I can put in the date available
- 9 and I can see the full text complaint.
- 10 Q. Okay. And so, like, if we take some of
- 11 these, you know, red ones -- well, did you come up
- 12 with the color coding?
- 13 A. No, I did not.
- 14 Q. Have you ever seen this color coding
- 15 before?
- 16 A. Yes.
- 17 Q. All right. And do you know who came up
- 18 with the color coding?
- 19 A. Somebody at CNS, but I don't know who.
- Q. Did you do anything to calculate? See
- 21 these columns here that say "Delay (by date in
- 22 calendar days)," "Delay (by date in court days)"?
- 23 Do you see that?
- 24 A. Yes.
- Q. Did you do any -- sorry, are you the one

Page 126

- 1 that made those columns, or did somebody else?
- 2 A. No, I think those are auto generated. I
- 3 don't do anything with them.
- 4 Q. Did you do anything to auto generate 5 those?
- J mose:
- 6 A. No. Well, I put the information in the
- 7 fields, and if that's what auto generates them,
- 8 then -- I did not do any creation of the Excel
- 9 spreadsheet. I just put that information in.
- 10 Q. So this spreadsheet was provided to you 11 by CNS?
- 12 A. Correct.
- 13 Q. And you just would put the information
- 14 in?
- 15 A. Correct.
- 16 Q. And so for instance, if I look here,
- 17 9/1/21, it's a little hard to track.
- Do you see how I'm doing that?
- 19 A. Yes.
- 20 Q. "Collections" here. Do you see this one?
- 21 A. Yes.
- Q. Are collections something that CNS has
- 23 you report on?
- A. If they're collections against a
- 25 business, any non-individual, then I will report

1 on them. But I track all of them.

- 2 Q. Do you know if you reported on this
- 3 complaint, No. 8110?
- 4 A. I do not know if I did or not.
- 5 Q. And so how are you calculating the date
- 6 it was docketed online and the date it's
- 7 available?
- 8 Do you see that there?
- 9 A. Um-hmm.
- 10 Q. That's the same day, right?
- 11 A. It looks like it, yes.
- 12 Q. And yet it then shows something on -- see
- 13 this column that says "9/1"?
 - A. Um-hmm.
- 15 Q. Where are you getting that information
- 16 from?

14

21

- 17 A. I don't put that in there.
- 18 Q. Who puts that information in there?
- 19 A. Whoever created the spreadsheet.
- Q. Do you know who that is?
 - A. I don't know.
- MS. DUKE: Well, Jon, I would ask for the
- 23 metadata for this spreadsheet that was submitted
- 24 to the federal court. So if you want to give it
- 25 in the original form, that will give us the data

Page 128

- 1 we need to know who makes additions.
- 2 Q. (BY MS. DUKE) So let me understand
- 3 this -- I think I'm getting this now, and this
- 4 will maybe shorten it up for you, Ms. Valenti --
- 5 is you provide the case number, the nature of the
- 6 case, the date, docket, online, the date
- 7 available, lawyer who filed it, meaning not pro
- 8 se, right?
- 9 A. Right.
- 10 Q. Which court, and that's where we have our
- 11 various counties, right?
- 12 A. Correct.
- 13 Q. And then notes. And we can look for
- 14 examples if you have some notes there. I'll ask
- 15 you about that.
- But the next column, do you have any idea
- 17 what that next column is?
- 8 A. The only thing I can think of, and I'm
- 19 not positive, because usually at the beginning on
- 20 the left side, I have a date of the filing, when
- 21 it was filed and the date available. That might
- 22 be the date it was filed. But I'm not sure
- 23 because it seems like that could be it. But you
- 24 would have to ask somebody who gave you this 25 compilation.

(154 of 297), Page 15421-297668034D6997,D3/9A/2A260DktFnlg:11918/22991364953979

Catherine Valenti November 8, 2022

- Q. So -- but that's not a date you entered,
- 2 right?
- 3 A. I didn't enter it in that order, no.
- Q. And you don't know that that -- what that
- 5 date represents, I mean, to talk to whomever put 6 it in?
- A. Yeah, I'm just guessing because of the 7
- 8 ones that are green that are all like 9/1, 9/1,
- 9 9/1, but that was -- actually they missed a
- 10 heading, and that was the date of the complaint,
- 11 the date that is on the complaint, because that is
- 12 missing from this particular part.
- Q. What do you mean "they missed a heading"? 13
- 14 I don't know what you mean.
- A. Missed the heading -- where it says "Case 15
- 16 Number," it shows case, date docket online. There
- 17 should be a date filed on there, unless it's over
- 18 to the -- if you scroll to the left or something.
- 19 MR. FETTERLY: Keely, can you scroll to
- 20 the left? Because I don't think you're showing
- 21 the entire document. I just opened it on my end,
- 22 and I see the date filed on the far left.
- 23 THE WITNESS: That's what I think we're
- 24 missing.
- 25 MS. DUKE: Oh, okay. Let me look. Maybe

- 1 Do you recall that?
- 2 A. Yes.
- 3 Q. And my understanding is you are not
- 4 familiar with whatever Tyler Technologies E-File &
- A. I'm not familiar with that.
- 7 Q. What you are familiar with is the iCourt
- portal, right?
- 9 A. Yes.
- 10 Q. And you're also familiar with the "Date
- 11 Docket Online," right?
- 12 A. Correct.
- 13 MR. FETTERLY: Vague and ambiguous,
- 14 overbroad.
- 15 You may answer.
- Q. (BY MS. DUKE) And the "Date Docket 16
- 17 Online" that's on your spreadsheet here, that is
- 18 the date that the document is available on the
- 19 docket sheet, correct?
- A. Correct.
- 21 Q. And "Date Available" really is the same
- 22 as the date docketed; is that correct? Or is that
- 23 different?
- 24 A. That can be different.
- 25 Q. And when it's different, tell me some of Page 132

- 1 I am -- okay. "Date Filed." You're right. I'm 2 sorry.
- 3 Q. (BY MS. DUKE) So when you look at "Date
- 4 Filed," where are you getting that date filed
- A. From the time stamp on the complaint or 7 the docket report if I haven't seen the complaint
- Q. All right. So explain that to me. So
- 10 "Date Filed," where are you pulling that
- 11 information from? From the actual iCourt docket?
- A. It's on a docket, but it's also a time
- 13 stamp and a date stamp on the regular complaint as
- 14 well.
- 15 Q. Do you know if that time stamp and
- 16 date -- have you ever asked anyone whether that
- 17 time and date stamp actually means filed or
- 18 submitted?
- A. I have not asked them. I mean, filed or 19
- 20 submitted, I'm not sure I know the difference.
- Q. Sure. I think you don't. So that's part
- 22 of what I'm getting to is I asked a question
- 23 earlier on in the deposition as to whether you
- 24 were familiar with Tyler Technologies E-File &
- 25 Serve.

- 1 the circumstances -- I think you've told me some.
- 2 Like pro se filers, right?
- 3 A. Once in a great while, a regular filing
- will be delayed for one reason or another.
- 5 But most of the time when it's different
- 6 it's because I have -- I do a final check of all 7 of these when I get home.
- I don't have access to the courthouse
- 9 anymore, so at that point I can say all of them
- 10 that I can see the docket reports, but it's after
- 11 hours or they -- I don't know if the court people
- 12 stay late or not. I don't know.
- 13 But I can only see the docket report, and
- 14 I haven't reported on it yet. I haven't seen it
- 15 at court. So I put in there the date the docket
- 16 is online. And then the next time I go to court,
- 17 I check.
- 18 Q. Right. So when we look to this
- 19 Exhibit 22, you know how it says "Date Filed" on
- 20 the far left here?
- 21 A. Yes.
- 22 Q. You're not the one that came up with the
- 23 names of these categories, correct?
- 24 A. Correct.
 - Q. That was come up -- somebody from CNS Page 133

Page 131

25

(155 of 297), Page 15:29f.2976680346697,03/96/2A250-8ktFnlgy:11918/22991355 363979

Catherine Valenti November 8, 2022

6 that right?

12 correct?

18 a certain time?

A. I have not.

7

8

13

14

19

24

A. That's right.

- 1 came up with that and said, "Hey, use this; use
- 2 this document"?
- A. Right. 3
- Q. And when you use "Date Filed," when
- 5 you're filling in that column, what you're doing
- 6 is you're looking at a little stamp on the
- 7 documents to identify that date, correct?
- A. Correct. I also look at the docket
- 9 report, and it's the same.
- 10 Q. Right.
- 11 A. But if I can't see the complaint, I can
- 12 see it on the docket.
- Q. But when you see it says "Date Docket 13
- 14 Online" --
- 15 A. Yes.
- 16 Q. -- the little stamp you're looking at,
- 17 where is it when you're filling this in?
- A. The "Date Docket Online" is not when I
- 19 see it. The "Date Docket Online" is when I can
- 20 see it myself.
- 21 So if I go in on the 1st and I can see
- 22 the docket on the 1st, that's when I'll fill that
- 23 out.
- 24 And then if I can't see the complaint
- 25 until the 2nd, then the "Date Available" would be

- Page 134

22 attachment to your declaration accurately reports

asking, if somebody from CNS --

23 the court's case management file?

- 3 Q. So let's use this one here. So you see
- 4 how you say "Date Docket Online" of 9/9?

1 the 2nd instead of the 1st. So that's what it

A. Right.

2 means.

- Q. That means that's when you could actually 6
- 7 access it on the court's iCourt portal, right?
- A. That's correct.
- 9 Q. That's when you had a docket available?
- 10 A. Right.
- Q. And then you put "Date Available" that 11
- 12 same date.
- 13 What date are you using to say "Date
- 14 Available"? Does that mean the complaint?
- A. Yes. That's when I can see the 15
- 16 complaint.
- Q. And then if you go all the way over to
- 18 "Date Filed," what I'm trying to understand is
- 19 exactly where you're getting what someone has
- 20 called "Date Filed" on this spreadsheet.
- A. The "Date Filed" is the date that is on
- 22 the docket report and on the full text document.
- 23 It will say "file date" and -- I'm not sure
- 24 exactly how it says it. And then it has that date
- 25 in there.

- 1 THE WITNESS: I'm not sure what you're
- 3 Q. (BY MS. DUKE) Well, I'm asking if you or

The date the docket is online is when it

Q. And have you ever talked with -- if you

Q. And, therefore, you also, I'm assuming,

9 do not know how these number of days are counted, 10 whether they're business hours, whether they're

11 just full 24-hour periods? You don't know that,

A. Correct, other than what I can see.

16 red, have you ever talked to any of the clerks as 17 to the first column of why there's a date filed of

Q. Sure. And have you ever -- on any of 15 these that are marked either yellow, orange, or

Q. Has anyone at CNS asked you to talk to

MR. FETTERLY: Objection; vague and

2 actually shows up and I can see it in court.

4 look at these reds, it's my understanding you're

5 not the one that came up with the color coding; is

4 anyone from CNS has actually taken this

21 any of the court clerks as to whether this

25 ambiguous, overbroad, lacks foundation.

- 5 spreadsheet to any court clerk and asked if you're
- 6 filling it out correctly.
- 7 A. No, I haven't.
- 8 Q. And I'm asking if anyone, you or CNS, has
- 9 taken this to any court clerk to ask if that
- 10 column "Date Filed" is correctly labeled or not.
- 11 I have not asked.
- 12 Q. And you don't know who came up with that
- 13 "Date Filed" column; is that correct?
- 14 A. I don't know. Whoever created the
- 15 spreadsheet, I assume.
- Q. Now, have you, since May of 2021 -- are 16
- 17 you doing these even to this day, where you're
- 18 tracking still today?
- 19 A. Yes.
- 20 Q. And are you submitting those to CNS?
- 21 A. Yes, I am.
- 22 Q. Who do you submit them to?
- 23 A. I submit them to Jon. And Jimmy
- 24 Shimabukuro and Chris Marshall and Bill Girdner.
- 25 Q. Remind me who Jon is.

Page 137

Page 136

(156 of 297), Pages 156:29f-29f-8969034-6697, D3/96/2026-50-12kt Fntry: 11/14/2999-156 97 3979

Catherine Valenti November 8, 2022

- 1 A. Jon Fetterly.
- 2 Q. Oh, Jon Fetterly.
- 3 A. It's been a while.
- 4 Q. No problem. Counsel too, all right.
- 5 And how often do you send these to that 6 group?
- A. Every day at the end of the last time I 8 check.
- 9 Q. And has that been the case since May of 10 2021?
- 11 A. Yes.
- 12 Q. So I should have a daily report that CNS
- 13 and its counsel have from you every single day in
- 14 the state of Idaho including this data on these
- 15 spreadsheets?
- 16 A. Yes, although there was a time when I was
- 17 only submitting them once a week. But I can't
- 18 remember when that ended. And it might have been
- 19 May 2021 when we started doing it daily. I really
- 20 can't remember now. But they would have a record.
- MR. FETTERLY: I want to jump in to avoid
- 22 a confusion.
- As of our last production, whatever the
- 24 last time you produced one of these spreadsheets,
- 25 it would capture all of the information. It's not

Page 138

3

- 1 multiple spreadsheets. It's a spreadsheet that
- 2 gets added to over time. So we've produced the
- 3 spreadsheet.
- 4 We can produce to you a -- most recent to
- 5 date, happy to do so. You already have one that
- 6 has as of the last time we produced it. But
- 7 that's -- I don't believe that you will find 365
- 8 different spreadsheets. That's why I want to
- 9 clarify that.
- MS. DUKE: Got it. And I appreciate
- 11 that, Jon.
- 12 Q. (BY MS. DUKE) So this is something that
- 13 you add to and then provide them access to,
- 14 Ms. Valenti?
- 15 A. Right, every day.
- MS. DUKE: Okay. And, yes, we would like
- 17 an updated version of that, Jon, before the
- 18 deposition tomorrow.
- 19 MR. FETTERLY: Sure.
- MS. DUKE: For sure, given that that's
- 21 the 30(b)(6) of CNS.
- Q. (BY MS. DUKE) All right. And you've
- 23 been doing that since May of 2021 when you were
- 24 asked to do so?
- 25 A. Yes.

- Q. And you're not going to testify to our
- 2 federal judge in this case as to how one would
- 3 interpret this spreadsheet; is that fair?
- A. As far as it's interpreted? Yeah, it's
- 5 just how I report it, what I see.
- 6 Q. Correct. But when it comes to what the
- 7 columns actually mean, you're not the one that
- 8 created those, and, therefore, you're not going to
- 9 testify as to what's meant by those columns,
- 10 correct?
- 11 MR. FETTERLY: Objection; vague and
- 12 ambiguous, overbroad, document speaks for itself.
- 3 Q. (BY MS. DUKE) And do you have any idea
- 14 if the "Date Filed" column is actually related to
- 15 the Tyler Technologies File & Serve submission
- 16 date?
- 17 MR. FETTERLY: Objection; vague and
- 18 ambiguous, lacks foundation, calls for
- 19 speculation.
- 20 THE WITNESS: No, I don't know.
- 21 Q. (BY MS. DUKE) Do you know whether or not
- 22 that column, "Date Filed," should actually be
- 23 called "Submitted to Tyler File & Serve"?
- 24 A. I don't know.
- 25 Q. Those are things you could not answer as

Page 140

- 1 you sit here today, correct?
- 2 A. To answer what? Today?
 - Q. You cannot answer today, or any other day
- 4 at this point, whether or not that "Date Filed"
- 5 column should actually be called "Submitted
- 6 Through Tyler File & Serve"?
- 7 A. I could not because I don't know the
- 8 procedure once it gets in there.
- 9 Q. And you don't -- that's fine. Thank you.
- Now, you have a number of conclusions
- 11 when you go to paragraph 8 of your declaration.
- 12 Let me get there.
- So when we go to paragraph 8 of your
- 14 declaration, can you see that still?
- 15 A. No.
- 16 Q. Okay. There it is. Can you see it?
- 17 A. Yes.
- 18 Q. Now, when you provide the opinions that
- 19 you do in paragraph 8, you're making some
- 20 assumptions in that, correct?
- A. Yes, I am.
- 22 Q. You're making an assumption -- or
- 23 assumptions that you don't know the answer to, as
- 24 we were just establishing, with respect to what
- 25 "Date Filed" actually represents in that

Page 141

(157 of 297), Pages 1 57:29f-29f-06903:03-106697, 03:00 file file of 297), Pages 1 57:29f-29f-29f-2979

Catherine Valenti November 8, 2022

	Catherine Valenti November 8, 2022			
1	spreadsheet, correct?	1	document through Tyler File & Serve, what it means	
2	MR. FETTERLY: Objection; misstates prior	1	to be actually filed in the court's case	
	testimony, vague and ambiguous, overbroad, lacks	1	management file, correct?	
	foundation.	4	A. Correct.	
5	THE WITNESS: I'm not sure if we're	5	Q. And so with respect to any reporting of	
	talking about the same date. I just know that	1	data that you do when you look to any of these	
7		1	spreadsheets, so whether you take one of these	
8	stamped and what is on the docket report.	1	spreadsheets and say that it needs X, Y, or Z, you	
9	But I don't know what happens as far as	1	don't know any of the information we just went	
	when somebody actually does a filing, so I can't	1	through in providing that response, correct?	
	answer that.	11	MR. FETTERLY: Same objections; misstates	
12	Q. (BY MS. DUKE) And with respect to	I	prior testimony. The witness has testified as to	
	paragraph 8, you can't answer how Tyler File &		what she knows and the source of the information	
- 1	Serve is factored into this data that you've been	1	she enters.	
- 1	tracking in Exhibit 1, correct?	15	MS. DUKE: And what she doesn't know.	
16	•	16	Q. (BY MS. DUKE) Go ahead.	
	correct.	17	A. I would say that's correct that I don't	
18	Q. And so you are making assumptions	1	know for sure. But I just like I said, I	
	paragraph 8 is an assumption that the	I	pulled out the information that's on the complaint	
	complaints are actually filed with the court's	I	and time stamps.	
	case management system on the date you put	21	Q. Okay. Thank you for that.	
	on the date that you enter on the spreadsheet	$\begin{vmatrix} 21\\22\end{vmatrix}$	Now, you've pulled some examples here in	
	of the date filed, correct?	1	paragraph 9. Were those examples that you came up	
24	MR. FETTERLY: Objection; vague and		with for your declaration?	
	ambiguous, overbroad, lacks foundation, misstates	25	And, again, if this is attorney-client,	
	Page 142		Page 144	
	Page 142		Page 144	
1	Page 142 prior testimony.	1	Page 144 certainly don't divulge anything that Mr. Fetterly	
1 2	Page 142 prior testimony. Q. (BY MS. DUKE) Is that correct?	1 2	Page 144 certainly don't divulge anything that Mr. Fetterly would have told you.	
1 2 3	Page 142 prior testimony. Q. (BY MS. DUKE) Is that correct? A. This is my understanding, yes.	1 2 3	Page 144 certainly don't divulge anything that Mr. Fetterly would have told you. But I'm asking you did you actually sit	
1 2 3 4	Page 142 prior testimony. Q. (BY MS. DUKE) Is that correct? A. This is my understanding, yes. Q. Well, that wasn't my question. My	1 2 3 4	Page 144 certainly don't divulge anything that Mr. Fetterly would have told you. But I'm asking you did you actually sit and say, "Wow. Case No. CV 01-21-13641, I didn't	
1 2 3 4 5	Page 142 prior testimony. Q. (BY MS. DUKE) Is that correct? A. This is my understanding, yes. Q. Well, that wasn't my question. My question is you're making assumptions that the	1 2 3 4 5	Page 144 certainly don't divulge anything that Mr. Fetterly would have told you. But I'm asking you did you actually sit and say, "Wow. Case No. CV 01-21-13641, I didn't get access to that as quickly as I thought I	
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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	prior testimony. Q. (BY MS. DUKE) Is that correct? A. This is my understanding, yes. Q. Well, that wasn't my question. My question is you're making assumptions that the "Date Filed" actually represents when the complaint was accepted into the court's case management system, correct? MR. FETTERLY: Objection. Same objections; vague and ambiguous, overbroad, lacks foundation, calls for speculation, calls for a legal conclusion. MS. DUKE: Jon likes this question. Q. (BY MS. DUKE) Is that correct? A. Well, the way you phrased it, I guess if it's an assumption, yes, I am making that assumption. Q. Because you haven't talked to anybody about what those stamps mean, correct?	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	certainly don't divulge anything that Mr. Fetterly would have told you. But I'm asking you did you actually sit and say, "Wow. Case No. CV 01-21-13641, I didn't get access to that as quickly as I thought I should"? Is that something you brought to CNS's attention? A. I was finding out the cases that were delayed, and yes. Q. So what process did you use to come up with the examples that you provided to our federal district court? A. I looked through the Big Sky Report, and I noted between that and my tracking sheet which complaints that were pretty newsworthy, which complaints had a delay. Q. And you came up with four examples, correct?	
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Page 145 37 (Pages 142 - 145)

Q. And do you know whether -- for the time

24 impression of the examples.

Page 143

24

Q. And you haven't talked to anybody about

25 what the process is when a filer submits a

(158 of 297), Pages 1 58:29f. 29f 6803-6697, D3/96/20250 Pkt Fintry: 12/18/299 158 85 3979

Catherine Valenti November 8, 2022

- 1 frame that these documents were actually filed in
- 2 the court's case management system?
- 3 MR. FETTERLY: Objection; vague and
- 4 ambiguous as to the word "filed," potentially
- 5 calls for a legal conclusion, overbroad, lacks
- 6 foundation, calls for speculation.
- 7 THE WITNESS: So you have to ask the
- 8 question again. I'm sorry.
- 9 MS. DUKE: Go ahead and read it back,
- 10 Amy. Sorry.
- 11 (The record was read by the reporter.)
- 12 THE WITNESS: For the time frame? I
- 13 guess I'm not quite clear on the question, but I
- 14 know the time frame they were filed versus when I
- 15 saw them.
- 16 Q. (BY MS. DUKE) Well, that's because
- 17 you're making those assumptions we talked about,
- 18 correct?
- 19 A. I think so, correct, yes.
- Q. And so let me ask it this way: Do you
- 21 know when that first example for the high school
- 22 graduate working as a page in the Idaho State
- 23 legislature, do you know when that complaint was
- 24 transferred from the Tyler Technologies File &
- 25 Serve system to the district -- or to the Ada

1 County court case management system?

- 1 specifically -- well, once I got this one, you
- 2 know, you send -- you can send in a case -- I
- 3 don't think I specifically mentioned them, but
- 4 they're in the Big Sky Report.
 - Q. Well -- I'm sorry, go ahead.
- 6 A. The tracking report. So are you asking
- 7 if I told them that these were issues at the time?
- Q. No. I'm asking whether -- after putting
- 9 them in the Big Sky Report whether you followed up
- 10 with these cases and further reported to CNS that
- 11 these were newsworthy cases that should be
- 12 followed and further reported on as to how the
- 13 cases were progressing.
- 14 A. I don't remember all of -- if I did any
- 15 of those, but probably did the one with the
- 16 legislature.
- 17 MS. DUKE: And, Jon --
- 18 Q. (BY MS. DUKE) Oh, go ahead.
- 19 A. I can't remember for sure. But that one
- 20 would be one I would send in for a story write-up.
- 21 Q. And do you know if a story write-up was 22 done?
- 23 A. I do not.
- Q. All right. When you look to your
- 25 affidavit here in these examples again, you would

Page 14

- Page 146
- 2 A. I don't know anything about transferring
- 3 any of the files. All I know is that the time
- 4 stamp on it said that particular date.
- 5 Q. And so you do not know when this
- 6 complaint would have been reviewed by a court
- 7 clerk and accepted for filing into the case
- 8 management document for the court, correct?
- 9 A. Correct.
- 10 Q. And that is the same answer for the
- 11 second example you have there related to a Bitcoin
- 12 operator, correct?
- 13 A. Correct.
- 14 Q. And that's the same for the next example
- 15 that you have, which is the collision of two
- 16 planes, correct?
- 17 A. Correct.
- 18 Q. And that is also the case for the no
- 19 wake zone case, correct?
- 20 A. Correct.
- Q. With respect to any of those four cases,
- 22 at any point in time did you write to anyone at
- 23 CNS that those were newsworthy cases that should
- 24 be further reported on?
- 25 A. That is in the report. I don't

- 1 agree with me that with respect to that first
- 2 bullet, the high school graduate working as a
- 3 page, that you are making an assumption that the
- 4 case was filed on Friday, August 27th, correct?
- 5 MR. FETTERLY: Objection; vague and
- 6 ambiguous, misstates prior testimony, lacks
- 7 foundation, and calls for a legal conclusion.
- 8 Q. (BY MS. DUKE) So let me ask it this way,
- 9 Ms. Valenti: These are your written words on this
- 10 affidavit or declaration, correct?
- 11 A. Correct.
- 12 Q. These are words that you would have
- 13 reviewed and approved before signing?
- 14 A. Correct.
- 15 Q. And you chose to use the word "filed"
- 16 with respect to all four of these bullets.
- 17 Let me just get them all highlighted for
- 18 you. There's that one.
- 19 You would agree with me they all say
- 20 "filed"?
- 21 A. Yes.
- Q. And the word "filed" is a word that you
- 23 chose to use in this sworn declaration?
- 24 A. Correct.
- Q. A declaration that you declared under

Page 149

38 (Pages 146 - 149)

(159 of 297), Pages 159:29f-297668034D6697,D3/Q6/2A260DktFnlgy:129:54/2299139296

Catherine Valenti November 8, 2022

- 1 penalty of perjury under the laws of the United
- 2 States of America that was true and correct?
- 3 A. Correct.
- 4 Q. And your signature is there on the
- 5 signature page, correct?
- 6 A. Correct.
- 7 Q. And with respect to "Filed," you felt it
- 8 was important to note with all four of those what
- 9 you understood to be the filing date of those
- 10 complaints, correct?
- A. Correct. 11
- 12 Q. And by "Filed," you testified before that
- 13 "Filed" meant that it actually was in the court
- 14 file, correct?
- 15 A. That's my understanding, correct.
- Q. And that means that it would actually be 16
- 17 on the docket as of the date filed, correct?
- MR. FETTERLY: Objection; vague and 18 19 ambiguous, misstates prior testimony.
- 20 Q. (BY MS. DUKE) Correct?
- 21 A. I mean, it should be, obviously, if it's
- 22 in the court system.
- 23 Q. Because you don't want to report on case\$23 a number of assumptions that were made related to
- 24 that have not yet had filed complaints, correct?
- 25 A. Correct.

Page 150

- Q. Because that's not what you are tasked to
- 2 do by CNS, right?
- 3 A. Right.

1

- 4 Q. And what you've been asked to do is only
- 5 report on cases that are actually filed and
- 6 initiate a court proceeding, right?
- 7 That are actually filed, yes.
- 8 MR. FETTERLY: Belated objection as to
- 9 the "actually filed," lacks foundation, calls for
- 10 speculation, calls for legal conclusion.
- 11 Q. (BY MS. DUKE) Do you have anything else 12 to add?
- 13 A. Just that I'm not sure how else to say it
- 14 was filed except the date that it was time
- 15 stamped, that it went into the system.
- Q. And what's important to you is that it is
- 17 a filed complaint that initiates a court
- 18 proceeding, correct?
- 19 A. Correct.
- Q. Because it is filed complaints that
- 21 initiate court proceedings that you have been
- 22 charged by CNS to report on?
- 23 A. Correct.
- 24 Q. You are not looking to report on
- 25 non-filed complaints that have not yet initiated a

- 1 proceeding, correct?
- A. Correct. 2
- 3 Q. Let me show you your second declaration.
- 4 All right. You see that, your
- 5 supplemental declaration?
- 6 A. Yes.
- 7 Q. And it's my understanding you did not
- 8 review this in preparing for today's deposition?
- A. Unless it was in the other one, I don't
- 10 remember seeing -- reviewing that.
- 11 Q. You in this declaration, same questions.
- 12 You understood that you were under oath when you
- 13 signed this document?
- 14 A. Yes.
- 15 Q. And you would agree that you would not
- 16 have signed it if everything contained within it
- 17 was not true, accurate; is that correct?
- 18 A. As far as I know it to be true and
- 19 accurate, obviously.
- 20 Q. Well, and when you say "as far as I know
- 21 it to be true and accurate," we've been able to
- 22 establish through this deposition that there were
- 24 your interpretation of the spreadsheet you were
- 25 asked by CNS to fill out that you don't know the

- 1 answer to; is that fair?
- 2 A. Yes, correct. We have different ideas of
- 3 filing dates.
- 4 Q. And those are things you have not
- 5 verified with the court clerks as to how Tyler's
- 6 File & Serve fits within everything we're talking
- 7 about here today as to date filed; is that
- 8 correct?
- 9 A. Correct.
- 10 Q. And so again, same question with
- 11 paragraph 3. Paragraph 3 is just based on
- 12 assumptions that you've made and have not yet
- 13 verified as to timing or alleged delays of
- 14 complaints; is that fair?
- 15 A. Yes, that's fair.
- 16 MS. DUKE: Jon, let's go ahead and take
- 17 just a couple minutes, and I think I'm almost
- 18 done.
- 19 MR. FETTERLY: Okay.
- 20 THE VIDEOGRAPHER: Okay. So the time is
- 5:06 p.m., and we are off the record.
- 22 (Break taken from 5:06 p.m. to 5:11 p.m.)
- THE VIDEOGRAPHER: All right. So we are 23
- 24 recording. The time is 5:11 p.m., and we are back 25 on the record.

Page 153

39 (Pages 150 - 153)

(160 of 297), Page 160 of 29f 2006803406097, 03/06/20260 08tt filty: 12018/2299 160 of 2979 Catherine Valenti November 8, 2022

1 1	MC DUITE OF WILLIAM		1 1 4 4 4 1 6 1 1 1 1 1 1 1 1 4
1	MS. DUKE: Okay. We're back on the	l .	dockets or the actual filed civil complaints so
_	record.	l .	that you could view them the same day of filing or
3	Q. (BY MS. DUKE) Now, it's my understanding	l .	shortly thereafter; is that fair?
	that Carson McCullough will cover for you when you	l	
	are either sick or on vacation, taking a day off;	5	Q. And right now, as you understand it, the
	is that fair?	l .	electronic inbox is the functional
7	A. That's fair, yes.		equivalent well, strike that.
8	Q. You are the person at CNS that is	8	At this point, is it your understanding
		l .	that by you going to the iCourt portal, you are
10	of Idaho?	10	getting to view the dockets and then obtain the
11	A. Yes.	11	necessary information so that you can timely
12	Q. And when I say "reporting in the state of	12	report on newly filed complaints that initiate a
13	Idaho," you understand that to mean preparing and	13	state action in the state of Idaho?
14	distributing the Big Sky Report each day, each	14	MR. FETTERLY: Objection; vague and
15	workday?	15	ambiguous, overbroad, lacks foundation, calls for
16	A. Yes.	l .	a legal conclusion as to "timely," likewise with
17	Q. And does Carson McCullough have anything	l .	respect to "filed."
	to do with telling you how to do your job here in	18	THE WITNESS: I can I go there to get
	the state of Idaho?	l	the reports and file them as soon as I see them.
20	A. No.	l .	I think that's what you're asking.
21	Q. And do you have to report to him in any	21	Q. (BY MS. DUKE) You mean report on them?
	way as to how you do your job?	22	
23	A. I don't report to him, but I give him the	23	Q. And do you yourself have an understanding
	information that he needs to sub for me.	l .	of what the First Amendment means in the context
25		l .	of this lawsuit?
23	Q. Right. When he's going to sub for you, Page 154	23	Page 156
	-		
	you're going to provide him with your working	1	A. Not being able to get the information out
_ ^		_	
2	documents so that he can use those and catch up?	2	as soon as we get it. The public's right to know.
3	A. Correct.	3	Q. And what you do is as soon as you get it,
3 4	A. Correct.Q. Does he physically go to the courthouses,	l .	Q. And what you do is as soon as you get it, you then advise the public, the subscribers,
3 4	A. Correct.Q. Does he physically go to the courthouses,or to the Ada County Courthouse?	3	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report?
3 4	A. Correct.Q. Does he physically go to the courthouses,	3 4	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report?
3 4 5	A. Correct.Q. Does he physically go to the courthouses,or to the Ada County Courthouse?	3 4 5	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes.
3 4 5 6 7	A. Correct.Q. Does he physically go to the courthouses,or to the Ada County Courthouse?A. Yes.	3 4 5 6 7	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes.
3 4 5 6 7	 A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and 	3 4 5 6 7 8	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to
3 4 5 6 7 8	 A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? 	3 4 5 6 7 8	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access?
3 4 5 6 7 8 9	 A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? A. Yes. 	3 4 5 6 7 8 9 10	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access?
3 4 5 6 7 8 9 10	 A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? A. Yes. Q. Are you two basically equals? 	3 4 5 6 7 8 9 10 11	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access? MR. FETTERLY: Objection; vague and
3 4 5 6 7 8 9 10 11 12	 A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? A. Yes. Q. Are you two basically equals? A. Yes. 	3 4 5 6 7 8 9 10 11	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access? MR. FETTERLY: Objection; vague and ambiguous, overbroad, lacks foundation, calls for a legal opinion, calls for a legal conclusion.
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3 4 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? A. Yes. Q. Are you two basically equals? A. Yes. Q. When he's not covering for you, what does he do? What's his job? Do you know? A. He does reports on other other aspects. I'm not sure everything he does, but he does do other work for CNS. Q. Okay. But he's not the one primarily responsible for reporting on initial complaints	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access? MR. FETTERLY: Objection; vague and ambiguous, overbroad, lacks foundation, calls for a legal opinion, calls for a legal conclusion. THE WITNESS: Yes, I would say timely is important, sure. MS. DUKE: All right. Thank you very much for your time. THE WITNESS: Thank you, Keely. MR. FETTERLY: Before we go, couple just
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? A. Yes. Q. Are you two basically equals? A. Yes. Q. When he's not covering for you, what does he do? What's his job? Do you know? A. He does reports on other other aspects. I'm not sure everything he does, but he does do other work for CNS. Q. Okay. But he's not the one primarily responsible for reporting on initial complaints that are filed in the state of Idaho through the	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access? MR. FETTERLY: Objection; vague and ambiguous, overbroad, lacks foundation, calls for a legal opinion, calls for a legal conclusion. THE WITNESS: Yes, I would say timely is important, sure. MS. DUKE: All right. Thank you very much for your time. THE WITNESS: Thank you, Keely. MR. FETTERLY: Before we go, couple just quick follow-up questions.
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3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? A. Yes. Q. Are you two basically equals? A. Yes. Q. When he's not covering for you, what does he do? What's his job? Do you know? A. He does reports on other other aspects. I'm not sure everything he does, but he does do other work for CNS. Q. Okay. But he's not the one primarily responsible for reporting on initial complaints that are filed in the state of Idaho through the Big Sky Reports, right? A. Correct. Q. Now, back in the we'll call them the olden days of paper filing, the Ada County Courthouse and other counties, as you've	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access? MR. FETTERLY: Objection; vague and ambiguous, overbroad, lacks foundation, calls for a legal opinion, calls for a legal conclusion. THE WITNESS: Yes, I would say timely is important, sure. MS. DUKE: All right. Thank you very much for your time. THE WITNESS: Thank you, Keely. MR. FETTERLY: Before we go, couple just quick follow-up questions. EXAMINATION BY MR. FETTERLY: Q. Ms. Valenti, bear with me while I bring up my screen here.
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	A. Correct. Q. Does he physically go to the courthouses, or to the Ada County Courthouse? A. Yes. Q. And so he'll do what you do in going and making those reports? A. Yes. Q. Are you two basically equals? A. Yes. Q. When he's not covering for you, what does he do? What's his job? Do you know? A. He does reports on other other aspects. I'm not sure everything he does, but he does do other work for CNS. Q. Okay. But he's not the one primarily responsible for reporting on initial complaints that are filed in the state of Idaho through the Big Sky Reports, right? A. Correct. Q. Now, back in the we'll call them the olden days of paper filing, the Ada County	3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Q. And what you do is as soon as you get it, you then advise the public, the subscribers, through the Big Sky Report? A. Yes. Q. And do you understand that access to newly filed complaints is consistent with the First Amendment's right of timely access? MR. FETTERLY: Objection; vague and ambiguous, overbroad, lacks foundation, calls for a legal opinion, calls for a legal conclusion. THE WITNESS: Yes, I would say timely is important, sure. MS. DUKE: All right. Thank you very much for your time. THE WITNESS: Thank you, Keely. MR. FETTERLY: Before we go, couple just quick follow-up questions. EXAMINATION BY MR. FETTERLY: Q. Ms. Valenti, bear with me while I bring up my screen here.

40 (Pages 154 - 157)

(161 of 297), Page 16:129 2000 24-6697 D03/06/2025 Pkt Fintry: 12/13/229 a 16:1 42 3979

Catherine Valenti November 8, 2022

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1	MR. FETTERLY: And actually, first	1	A. It's at the top, the time stamp.
2	question to Keely. What was the exhibit number we	2	Q. Now I'm going to go to Exhibit No. 4 and
3	were using for the Valenti declaration?	3	ask you the same line of questions.
4	MS. DUKE: 22. And 23 is the	4	I'm showing you the face page for Exhibit
5	supplemental.	5	No. 4.
6	` 1	6	Does this document reflect the date that
7	,	7	you used to ascertain the date filed for Exhibit
8	, , , , , , , , , , , , , , , , , , , ,		No. 4?
	showing you a portion of your declaration that you	9	A. Yes. 6/24, yes.
	were discussing earlier with Ms. Duke concerning	10	Q. And where do you see that?
	Exhibit No. 22. And specifically you were	11	A. At the top under "Electronically Filed."
	providing testimony concerning this paragraph	12	Q. Yeah. And so this one, the blue ribbon
	No. 9.	13	1 '
14	Do you recall that?	l	correct?
15		15	A. Correct.
16		16	Q. And what is the first sentence on the top
	concerning how you ascertained the date on which	1	of the U.S. District Court applied time stamp?
	the complaints identified in paragraph 9 were	18	A. Above the time stamp is "Electronically
1	filed as you described in your declaration.	l	Filed."
20	·	20	Q. Thank you. I'm now showing you Exhib
21	A. Yes, I do.		No. 5, and I'm showing you the face page of
22		l .	Exhibit No. 5.
	showing you the caption or face page of Exhibit	23	Does this document reflect the date that
	No. 2.	I	you used to ascertain the date filed?
25	Do you see that?	25	A. Yes. I think I can see it. Page 160
	1 ugo 130		
1		1	Q. I can try to enlarge it for you. And
2			what is it?
	you used to ascertain the date filed?	3	A. 6/8/2021.
4	· •	4	Q. And where is that reflected?
5	•	5	A. That's on the time stamp at the top.
6	1,	6	Q. We've just looked at four time stamps on
7	•		four documents that were attached as exhibits to
8	•	l	your declaration.
	added by the federal court when we file documents.	9	When you track complaints, are you
	Can you read, or are you familiar with the		similarly using the same time stamp on those on complaints you track when entering the date filed
	language at the top of that time stamp applied by	I	on the courthouse tracking sheet?
	the Idaho District Court that's partially obscured	13	A. Yes, that's what I use.
	by the blue ribbon applied by the U.S. District Court?	14	MR. FETTERLY: Thank you. Nothing
15			further.
	it, but it's hard to see right now.	16	MS. DUKE: Couple follow-ups for you,
17		17	Ms. Valenti.
	No. 3. This is I'm showing you the face page	18	If you'd keep that up, Mr. Fetterly, that
	of Exhibit No. 2.	l .	would be great.
20		20	MR. FETTERLY: Sure.
$\begin{vmatrix} 20 \\ 21 \end{vmatrix}$	Q. Does this face page reflect the date that	20 21	MIN. PETTERET. SUIC.
	you used to ascertain the date filed for Exhibit	22	FURTHER EXAMINATION
1	No. 3?	l	BY MS. DUKE:
23		24	Q. Again, though, you have not talked with
25			anyone in the district court clerk's office as to
143	Q. And where do you see that:	43	anyone in the district court clerk's office as to
	Page 159		Page 161

41 (Pages 158 - 161)

(162 of 297), Page 16229f 200680640697,03/06/2026098t Filty: 12/15/229p 162 of 2979 Catherine Valenti November 8, 2022

		_	
1	when or why this stamp is applied as it is,	1	VERIFICATION
2	correct?	2	CTATE OF
3	A. Correct.	3	STATE OF)
4	Q. And you do not know how Tyler File &		COUNTY OF
5	Serve factors into the entries that Mr. Fetterly	4	
6	just went through with you, correct?	5	I, CATHERINE VALENTI, being first duly sworn on my
7	A. Correct.	l .	oath, depose and say:
8	Q. And you are not the one who came up with	7 8	That I am the witness named in the foregoing deposition taken the 8th day of November, 2022,
9	the "Date Filed" column, correct?		consisting of pages numbered 1 to 163, inclusive; that I
10	MR. FETTERLY: Objection; overbroad,		have read the said deposition and know the contents
11	vague and ambiguous, misstates prior testimony.	l .	thereof; that the questions contained therein were
12	Q. (BY MS. DUKE) You're not the one that		propounded to me; the answers to said questions were
13	came up with the "Date Filed" column as in what it		given by me, and that the answers as contained therein (or as corrected by me therein) are true and correct.
14	was called, correct? That was provided to you by	15	(or as corrected by the different) are true and correct.
15	somebody at CNS?	16	Corrections Made: YesNo
16	A. Correct.	17	
17	Q. And you don't know whether instead it	18	
18	should say "Date Submitted," correct?	19	CATHERINE VALENTI
19	A. Correct.	20	C.T.T.E.K.I.V.
20	MS. DUKE: All right. Thank you.	21	Subscribed and sworn to before me this day of
21	MR. FETTERLY: Nothing further.	22	, 2022, at, Idaho.
22	THE VIDEOGRAPHER: All right. Are we	23	
23	done?	24	Notary Public for Idaho
24	MS. DUKE: Yeah. Thank you.		Residing at, Idaho
25	•	25	My commission expires:
	Page 162		Page 164
1	concludes our video deposition with Cathy Valenti.	1	REPORTER'S CERTIFICATE
	concludes our video deposition with Cathy Valenti. It is November 8th, 2022. The time is 5:21 p.m.,	_	REPORTER'S CERTIFICATE STATE OF IDAHO)
2		2	STATE OF IDAHO)
2	It is November 8th, 2022. The time is 5:21 p.m.,	2	
3	It is November 8th, 2022. The time is 5:21 p.m.,	3 4	STATE OF IDAHO) COUNTY OF ADA)
2 3 4	It is November 8th, 2022. The time is 5:21 p.m., and we are off the record.	2 3 4 5	STATE OF IDAHO) COUNTY OF ADA) I, Amy E. Simmons, Certified Shorthand Reporter and
2 3 4 5	It is November 8th, 2022. The time is 5:21 p.m., and we are off the record. (Whereupon the deposition was concluded at 5:21 p.m.)	2 3 4 5 6	STATE OF IDAHO) COUNTY OF ADA)
2 3 4 5 6	It is November 8th, 2022. The time is 5:21 p.m., and we are off the record. (Whereupon the deposition was concluded at 5:21 p.m.) ****	2 3 4 5 6 7 8	STATE OF IDAHO) COUNTY OF ADA) I, Amy E. Simmons, Certified Shorthand Reporter and Notary Public in and for the State of Idaho, do hereby certify: That prior to being examined, the witness named in
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42 (Pages 162 - 165)

[& - 7th]

&	16,672nd 88:19	86:16 163:2	4
& 2:6 4:15 13:17	16,772 87:9	164:8,22 165:19	-
14:16 131:24	161 3:5	208 2:21,22	4 3:11 160:2,5,8
	16276 89:12	21 3:12 40:19,20	40 3:12
132:4 140:15,23	163 164:9	40:22,25 51:12	415 2:16,16
141:6 142:13	166 87:23 88:12	52:1 81:4,18	44 64:20 67:22
143:22 144:1	166,000 87:4,7	96:14,15 100:23	124:16
146:24 153:6	16600 87:24	110:22	4:11 121:11,12
162:4	16653 90:22	22 3:14 88:1,7,21	4:24 121:12,14
0	16672 88:18	121:16,18	4th 17:6
00305 1:4 4:10	16676 88:23	122:12 133:19	5
01 88:1,3,6	89:24	158:4,11	5 3:5,18 123:22
01-21-13641	16677 89:12	23 3:16 158:4,6	160:21,22
145:4	16699 87:24	24 3:13 136:11	50 5:25 90:17
1	1:12 2:10 4:5	27 3:11	55 5:25
1 96:19 142:15	1:21 1:4 4:10	27th 149:4	5:00 37:15,15
164:9	1st 134:21,22	29423 165:21	77:21
1-6-6 87:10	135:1	2:00 37:11	5:06 153:21,22
10/11/22 3:11	2	2:03 39:24,25	5:11 153:22,24
10/7/2022 36:3	_	2:11 39:25 40:2	5:21 163:2,5
100 15:20 84:15	2 101:1,1 158:22 158:24 159:19	2nd 134:25	6
87:14,22 88:13	20 3:11 27:5,7,9	135:1	6 139:21
100s 84:15 87:11	27:13,14 35:10	3	6/13/28 165:25
1087 2:20	36:4 40:16	3 80:20 81:5,18	6/24 160:9
10:00 37:11	41:16	96:16 100:23	6/8/2021 161:3
11 36:4 40:16	2015 9:10,11,21	153:11,11	672 87:20
11/19/1957 5:21	79:20	159:18,23	675-3400 2:16
11/7 84:5	2016 9:3,10	30 139:21	675-3434 2:16
11/7/2022 87:18	53:10 66:20	30 139.21 300 2:20	685 1:22
11/7/22 84:8	79:20	342-3299 2:22	6:00 37:23 38:4
121 3:14	2017 66:21	342-3310 2:21	7
14 110:22 111:3	201 7 00.21 2021 124:3	365 139:7	
157 3:6	125:11 137:16	3:00 78:17,18	73 3:15 7387 2:20
158 3:16	138:10,19	3:15 78:18,20	
15th 165:18	139:23	70.10,20	7th 2:15 86:16
16 87:16,19 88:8	2022 1:14 2:9		89:4
16,000 87:9	4:5 17:7 36:4		

[8 - amendment]

8	147:7	61:20 63:22	149:1,19 152:15
8 1:14 141:11,13	access 24:9,12	72:12,19 74:12	ahead 16:17
141:19 142:13	32:12,19,23	74:14 76:2,4	27:7 30:23
141.19 142.13	85:14 98:1	83:1,3,7,12,23	39:14 40:18
8/27 159:24	101:19 102:11	83:24 85:10,15	50:23 59:11
8110 128:3	103:2 105:23	85:19 86:19,21	78:11 81:8
83707 2:21	106:2,22,25	86:23 88:5,6,6	95:25 102:22
8:00 37:9	108:1,7,11	88:19 89:4	104:13 112:2,5
8th 2:8 4:5 163:2	109:22 123:1,16	90:11,13 94:16	123:23 124:18
164:8	123:19 124:11	94:19 95:17	144:16 146:9
	133:8 135:7	96:6 98:1,17	148:5,18 153:16
9	139:13 145:5	101:15 103:8,11	alleged 153:13
9 144:23 158:13	157:7,9	107:23 124:20	allow 32:12,23
158:18	accessing 34:19	125:12 146:25	allows 105:22
9/1 128:13 130:8	98:16 101:16	155:5,23 165:3	ambiguous
130:8,9	accuracy 103:12	add 139:13	29:18 30:21
9/1/21 127:17	accurate 122:13	151:12	31:12 44:3,22
9/9 135:4	122:16 152:17	added 139:2	47:24 48:19
90 82:6,8	152:19,21	159:9	49:20 51:15
94111-4070 2:15	accurately	addition 9:5	54:5,23 56:6
9:00 37:9	136:22	10:3 11:4,6	57:5 58:7,23
a	action 46:12	additional 115:2	59:9 73:7,20
abilities 109:24	156:13 165:17	additions 129:1	77:16 98:14
ability 108:11	active 43:18	address 93:18	104:5,11,24
able 7:11 25:19	actual 17:16	101:17 112:10	105:9 107:7,19
53:14 64:11	39:11 47:20	adequately 19:6	108:15 115:9
79:6,11 82:23	48:3 59:7 63:1	administrative	118:2 120:13,18
85:14 103:2	63:20 64:7	1:8	132:13 136:25
108:7 109:13	65:20 72:25	advise 157:4	140:12,18 142:3
110:2 112:6	74:25 97:16	advised 50:17	142:25 143:10
119:20 120:3,5	114:11 115:5,11	affidavit 148:25	146:4 149:6
120:10,16,22	117:16 131:11	149:10	150:19 156:15
152:21 157:1	156:1	afternoon 37:6	157:11 162:11
absolutely 19:13	ada 2:8 12:6	ago 43:3,23	amended 16:20
81:1	47:2,7 48:13,15	54:17 62:23	17:2,10
accept 54:1	49:5,16,17 50:1	64:10	amendment
accepted 57:2	52:9,12,13,20	agree 103:12	26:20 156:24
58:4 143:7	53:4,6,21 61:19	107:21 122:23	

[amendment's - back]

amendment's	appeared 57:22	98:9 99:1	attention 145:8
157:9	applicable 32:3	105:13 110:20	attorney 2:5
america 150:2	applied 159:11	117:3 137:2,3,8	7:16 11:18
amy 1:22 2:6	159:13 160:17	145:3 148:6,8	19:23 22:15
4:15 7:23	162:1	156:20	32:6 89:15,17
146:10 165:5,22	applies 45:24	aspects 155:15	91:22 114:22
ann 5:19	appreciate 79:16	assigned 30:25	118:20 144:25
answer 6:11,22	139:10	associated 2:6	attorney's 91:22
7:11,15,17 19:25	appreciation	4:15	118:16
29:19,20 30:22	101:20	assume 6:12	august 149:4
31:13,20 32:9	approved 149:13	105:21,22 120:2	auto 114:15
33:11 48:20	archived 79:11	137:15	127:2,4,7
49:21 51:16	area 65:12 102:6	assumes 99:15	automatically
54:6 56:8 57:7	areas 38:22	105:9	88:13 112:25
58:9 72:4 73:21	arrived 49:13	assuming 9:24	available 32:14
99:12 105:11	ascertain 159:3	34:22 57:19	33:9 34:14 82:4
107:24 108:16	159:22 160:7,24	62:12 89:14	93:19 102:2
118:4 120:1	ascertained	92:23 96:9	106:22 109:6
123:9,11 132:15	158:17	110:5 119:19,23	125:23 126:7,8
140:25 141:2,3	aside 8:1	123:7 136:8	128:7 129:7,21
141:23 142:11	asked 21:6,11,20	assumption	132:18,21
142:13,16	25:24 26:11	65:18 141:22	134:25 135:9,11
147:10 153:1	32:13,17 38:7	142:19 143:16	135:14
answering 16:22	43:4 51:19 57:9	143:17 149:3	average 37:3
answers 105:16	60:7,11 77:13,19	assumptions	avoid 8:5 138:21
164:12,13	77:23,25 78:4,5	141:20,23	aware 72:5
anybody 33:1	98:21 99:6,13,18	142:18 143:5	76:14,22 110:16
40:7,11 110:17	100:19 105:4	146:17 152:23	b
121:19,22	106:9 113:22	153:12	b 3:9 139:21
143:18,21,24	124:4,6 125:10	asterisk 87:11	back 36:17 40:2
anymore 133:9	125:14 131:16	88:12,12	40:5 49:2,6,10
anytime 90:2	131:19,22	attach 95:13	49:17 53:22
apologize 62:22	136:20 137:5,11	attached 112:24	59:17 62:2,23
appeal 93:25	139:24 151:4	118:18 161:7	66:20,23 78:21
appeals 45:25	152:25	attachment	78:23 79:15,17
46:3,6	asking 7:1 12:22	136:22	89:8,9 90:16
appearances	14:6,11 15:2	attempted 99:14	91:3 93:22
2:13 4:18	45:17,21 59:22		

[back - case]

95:10,14 96:4,13	53:17 55:9 59:4	bones 70:3	calendar 126:22
96:14,15 100:14	65:1 66:2 81:20	bonneville 67:25	call 7:2 19:23
121:14 146:9	116:11 117:17	71:6,10,12	20:23 95:6
153:24 154:1	122:13 139:7	bottom 92:2,4,15	112:11 119:2
155:22	believed 89:2	box 2:20	155:22
ball 82:22	best 8:8 101:8	break 6:17,23	called 16:8 21:23
balls 7:2	better 76:1	37:10 39:17,25	66:10 119:5
bare 70:3	87:25	40:7 67:16	135:20 140:23
based 14:15	big 3:11 27:15	78:12,18,23,25	141:5 162:14
28:16 41:11	27:16,17,21,24	79:3,5 121:6,12	calls 57:5 58:7
53:1 89:1 92:16	28:5,9,18,21	121:20,23	58:23 59:9 68:9
97:6 153:11	35:9 40:15	153:22	104:11,25
basic 45:9 63:15	41:15,18 84:8	brief 51:3 110:6	107:19,20 115:9
73:12 109:17,21	87:3 89:3 97:2	bring 44:13,15	118:2 120:18
112:20 113:1	100:1,4 105:4	47:15 157:23	140:18 143:11
114:14	106:11 116:2,21	brings 86:2	143:11 146:5,6
basically 7:4	117:24 118:9,13	broken 37:8	149:7 151:9,10
29:25 74:8 86:3	118:24 119:10	brought 46:12	156:15 157:11
87:14 89:7	145:14 148:4,9	82:15 145:7	157:12
155:10	154:14 155:20	bryan 2:14 4:20	camera 78:20
basis 24:6 106:6	157:5	bullet 149:2	canyon 62:7,11
124:2	bigger 125:6	bullets 149:16	62:19,24 63:8,21
batch 94:23	biggest 119:19	business 50:18	72:24 75:15,17
bclplaw.com	120:2	127:25 136:10	76:9,11
2:17	bill 21:3 50:23	busy 89:10 90:19	capacity 1:7
bear 122:10	137:24	117:12	caption 158:23
157:23	billings 35:21,22	butcher 90:21	capture 138:25
beauty 16:17	birth 5:20	butte 35:20,21	car 97:5 113:17
beginning 85:5	bit 15:1 60:10	35:24	carson 20:13,16
129:19	bitcoin 147:11	button 84:24	20:17 154:4,17
behalf 4:23	blended 125:16	c	case 1:4 4:9
68:20	block 88:11,14	c 4:1 100:24	11:15,16 14:21
belated 42:18	blocks 15:20	ca 2:15	16:7 17:25 18:1
73:4,6 151:8	blow 125:5	calculate 126:20	18:17,17,20,23
believe 10:17	blue 159:8,13	calculating	19:1,3,4,24
12:6 14:2 19:10	160:12	128:5	22:11 32:4
22:2 27:3 33:22	boise 2:21	120.5	36:19 49:8
36:9 48:2 53:9			50:18 52:22

[case - cns]

		T	,
56:20 63:1,4,16	111:12 113:9,13	charged 93:19	77:18 146:13
73:13,14,18 74:9	113:13,16,20	98:23 151:22	clerk 47:10,19
75:8,12 82:12	114:8,12,13,24	check 11:8 13:3	48:7,13 49:4,16
85:23 86:3 88:9	115:24 116:1,5	13:4 15:7,8,15	52:10,12 53:25
88:19 90:1	116:14 120:25	15:18,23 38:25	54:1,10,19 55:8
91:13 97:5 98:7	145:9 147:21,23	39:3 70:25 82:8	55:11,17 56:14
98:11 99:24	148:10,11,13	85:8 90:1	57:3,17 62:13
100:13 101:13	150:23 151:5	114:17 133:6,17	65:14 83:13,14
103:21 105:7	catch 155:2	138:8	94:12 137:5,9
107:16 108:3	categories	checked 76:24	147:7
109:14 111:8	133:23	checking 124:10	clerk's 73:17
116:3,20 117:17	catherine 1:13	chose 149:15,23	103:1 104:8
118:17 120:11	2:1,4 3:4,14,16	chouteau 34:2,3	161:25
125:21,22 129:5	5:7,19 164:5,19	chris 2:24 4:14	clerks 14:10
129:6 130:15,16	cathy 4:7 19:14	13:7,9,10 15:17	50:1 70:20
136:23 138:9	39:22 56:7	20:13 23:23	74:24 136:16,21
140:2 142:21	112:12 163:1	116:10 117:5	153:5
143:7 144:2	caught 49:7,23	137:24	click 85:1 86:2,6
145:4 146:2	49:24	christmas 78:6	86:7,25 89:25
147:1,7,18,19	cave 2:14 4:20	circle 15:13	90:3,20,22 91:13
148:2 149:4	center 2:15	47:12	91:18 92:19,21
cases 8:23 12:24	102:6	circumstance	93:10,14 101:21
13:2 15:13,14	certain 51:20	109:23	101:22 114:9,11
26:11,15 27:18	53:9 63:16 77:8	circumstances	114:20 115:2
31:5 32:2 35:11	88:10 93:19	133:1	clickable 92:20
37:5 44:18 45:4	101:9 110:13,20	civil 44:18 50:4	clicking 92:17
45:23 46:2	111:11,11	50:6 88:20	client 19:23
47:13 50:4,6	136:18	89:25 102:19	22:15 101:2
52:15 61:12,17	certainly 7:12	123:2,16 156:1	144:25
70:2,3 72:22	80:16 145:1	claims 26:19	clinton 50:23
74:12 76:16	certificate 165:1	50:9 52:15	close 39:16
77:20 81:20	certified 165:5	clarification	closed 36:23
83:24 84:10,10	certify 165:7,16	22:8	closely 16:5
84:13,18,23,25	cetera 92:20	clarify 8:9 47:25	club 42:17,21
85:3,6 86:21,25	chair 6:17	48:1 139:9	43:1,13,17
87:6 90:17 94:8	chance 80:13	classmate 89:11	cns 3:12 12:2,21
96:18 98:5,7	change 118:13	clear 14:12	21:14 25:1,12,20
103:16,25 105:6	119:16,19 120:3	59:20 72:11,12	26:18 28:9,16
L	1	I	

[cns - complaints]

32:13,17,23 33:4	90:10 116:4	communication	114:21 115:3
33:5,12 34:8,19	145:7	22:19	119:6 124:25
34:19 35:3	coding 126:12	communications	126:9 128:3
36:10 38:7	126:14,18 136:5	19:24 20:1	130:10,11 131:6
39:11 41:2,4,9	collect 28:25	22:15 121:23	131:7,13 134:11
41:11,22,25 42:6	29:10 36:13	company 2:6	134:24 135:14
43:4,10 45:11,12	69:12,24	4:16 90:21	135:16 143:7
46:3 50:12,17	collecting 65:15	91:19 92:16	144:19 146:23
51:12,19 52:1,6	collection 86:5	compilation	147:6 151:17
53:2 55:2 59:5	collections	129:25	complaint's
61:9,14 66:1,11	125:23 127:20	compile 29:3	109:6
68:5,17 69:17	127:22,24	31:4,5	complaints
71:18 72:2 75:3	collision 113:17	complaint 11:15	12:24 15:11
75:14,20 76:3,5	147:15	13:20,21 14:8	24:9,13 25:2,14
76:10,14 77:2,8	color 126:12,14	18:7,10,14,22	25:19,21,25
77:19,25 78:5	126:18 136:5	19:4 25:5 26:9	26:20 28:23
79:18,21,23,25	column 128:13	29:14 30:3 31:9	30:9 33:7,8 34:8
80:9 86:15 89:1	129:16,17 134:5	31:16 32:3,18,24	34:19 44:16
89:2 90:4,5	136:17 137:10	35:5 36:23	45:15 47:20
93:11,12,20,22	137:13 140:14	37:21 38:3	48:8,15 49:5,7
93:23,24 94:4	140:22 141:5	45:13 46:7,9,11	50:3,13,17 51:20
95:24 96:21	162:9,13	46:12,14,17,22	51:23 52:22
97:7 99:1,13,18	columns 126:21	46:24 47:6,7	55:15 56:24
100:6,15 106:9	127:1 140:7,9	53:25 54:25	57:2 62:17 63:4
110:19 111:18	come 43:21	55:7 57:1,22	64:15 65:21
113:21,22	61:21 126:11	62:13 65:23	68:3 70:7 75:5
115:25 117:16	133:25 145:11	66:8 68:22	75:17 82:18
124:6 126:19	comes 38:17	71:11,20,20 73:2	84:21 95:2
127:11,22	79:15 85:2	74:6 81:25	97:17 98:2
133:25 136:20	140:6	82:10 92:18,22	100:5,10 104:7
137:2,4,8,20	commencing 2:9	92:25 93:4,7,16	104:17,19,20
138:12 139:21	commission	94:11 95:18,24	107:1,5 108:12
147:23 148:10	164:25 165:25	95:25 96:6,23	110:4 111:13,16
151:2,22 152:25	communicate	97:1,12,19 106:3	111:17 115:6,14
154:8 155:16	121:22	107:11 108:7,19	115:18,21 119:8
162:15	communicating	109:11,20,22	119:9,20 120:4,5
cns's 26:19	76:15	110:1,10 111:20	123:2,17,19
68:20 69:11		112:21 114:11	124:15 142:20
L	I	I.	l .

[complaints - correspond]

145:16,17	confusion 7:11	95:18,21,23,25	117:25 119:11
150:10,24	138:22	96:5,7,10,25	120:8,25 122:22
151:20,25	consider 44:7	97:12 100:10	123:2,4,20,21
153:14 155:18	consistent 157:8	112:4,13,21,24	125:1,2 127:12
		116:9	127:15 129:12
156:1,12 157:8	0		
158:18 161:9,11	contact 111:21	corp 87:8	132:12,19,20,22
completely	112:7	corporations	133:23,24 134:7
1.111	contained	96:25 97:2	134:8 135:8
comply 80:8	152:16 164:11	correct 9:24	136:12,13
computer 80:14	164:13	10:2 11:23	137:13 140:6,10
95:17 102:21,24	contains 165:14	12:18 18:22	141:1,20 142:1
105:16 108:2	content 22:20	19:5 22:16	142:15,17,23
124:14,22	contents 20:1	25:22,23 28:1	143:2,8,14,19,20
computers	164:10	30:10 34:21	143:23 144:3,4
102:10,11,18	contest 6:15	35:6,23 37:25	144:10,17
concern 24:25	context 156:24	38:5,6 41:12,20	145:19,20
25:4,12,16,18	continue 96:18	42:15,23,24	146:18,19 147:8
concerned 25:1	continuing 27:6	44:17 50:14,15	147:9,12,13,16
concerning	conversation	50:20,21 51:13	147:17,19,20
158:10,12,17	21:22 22:1	51:17,21 52:16	149:4,10,11,14
concluded 163:5	conversations	52:24 54:20	149:24 150:2,3,5
concludes 163:1	21:3 22:13	56:15 57:3,14,23	150:6,10,11,14
conclusion 57:5	23:10 26:17	59:23,25 60:4,5	150:15,17,20,24
58:8,24 59:10	converted 53:6	60:21,22 63:7	150:25 151:18
104:12,25	copies 8:24	70:21 71:25	151:19,23 152:1
107:20 115:10	47:15,16 50:2	72:22 74:21	152:2,17 153:2,8
143:12 146:5	62:4 72:25	77:14,22,24 80:3	153:9 155:3,21
149:7 151:10	82:18 94:9	82:1 83:6,22	160:14,15 162:2
156:16 157:12	111:17	89:4,18 93:5,20	162:3,6,7,9,14
conclusions	copy 9:13 10:20	96:12 98:24,25	162:16,18,19
141:10	27:14 30:3	99:19 100:2,20	164:14
condense 45:4	47:16 53:25	100:21 103:13	corrected 164:14
confirm 7:12	56:2,3,10,10,13	103:18,22 104:2	corrections
10:23	56:15,18,21 57:9	104:3,9,17 105:1	164:16
confused 18:21	57:11 63:6	105:2 106:4	correctly 5:15
confusing 7:10	66:24 67:3	108:4 109:24	137:6,10
87:13	68:25 82:21	111:2 112:14	correspond 79:3
	93:15 94:10	115:18,19,22	_

[counsel - created]

counsel 4:17	75:15,18 76:2,4	52:24 54:25	courthouse 1:4
7:12 20:6 22:14	76:9,11,16 79:9	55:7,11,16 57:3	3:14,17 4:8,21
23:8 26:18	83:1,3,7,12,23	57:17,21 58:3,4	5:1 9:2,17,19
138:4,13	83:24 85:4,10,12	59:7 61:20,20	16:24 17:17
counted 136:9	85:15,19 86:19	63:21 64:7	20:17 21:16
counter 64:3,4,6	86:21,23 87:3	65:20 68:6,21	23:4,8,15 37:6
counties 12:12	88:5,6,6,19 89:4	70:20 71:20	45:8 53:24
12:15,16 24:15	90:11,13 94:16	73:1,16 74:15,16	58:12 60:12
28:25 30:24	95:4,17 96:6	74:25 75:9	71:12 83:5
31:1 32:12	98:1,17 101:15	84:10,13,18,23	85:15 98:2,17
33:15,23 34:20	103:2,8,11	84:25 85:2,6,16	101:16 133:8
35:3 47:3 62:9	107:23 124:20	85:20 86:25	155:5,24 161:12
63:13,25 64:10	125:12 147:1	87:5 88:4,20	courthousene
64:11,18,21,21	155:5,23 164:3	90:1,9 91:25	112:8
67:22 68:1,4,16	165:3	94:12 98:2 99:2	courthouses
68:18 70:12,14	county's 67:21	99:11 101:21	39:9 107:23
70:15,18 71:7	73:17	103:3 104:7	155:4
74:20 75:22	couple 6:4 36:21	107:13 108:4	courts 1:8 13:1,6
77:3 94:17,25	64:11 102:5	112:16,18,19	25:2,14 30:10
95:1,6,9 103:4	153:17 157:18	113:4,16,20	38:19,25 39:2
103:10 124:16	161:16	114:8 115:1,7,15	70:6 81:7 113:5
125:13 129:11	course 11:9	115:18 119:7,9	113:9 114:1,3
155:24	28:24	124:19 126:6,22	123:1,17 124:2
county 2:8 11:20	court 1:1 2:7	128:24 129:10	cover 49:12
12:6 29:15 32:4	4:10 5:4 7:23	133:11,15,16	154:4
32:10,10 47:2,2	8:19 15:13 16:3	136:2,21 137:5,9	coverage 122:24
47:7 48:13,15	16:4 17:23,24,25	145:13 147:1,6,8	covered 19:7
49:5,16,17 50:2	21:9 24:14 29:6	150:13,22 151:6	26:23 77:4
52:9,12,13,20	29:7,8,10 32:23	151:17,21 153:5	covering 75:6
53:4,6,21 54:19	34:16,25 35:17	159:9,12,14	84:3 124:16
61:19,20 62:1,7	35:17 36:6,7,11	160:17 161:25	155:12
62:11,19,24 63:9	36:15 37:11,13	court's 74:3	covers 20:19
63:12,21,23	37:15,22 38:8,18	98:11 104:1,21	crash 97:5
64:14 65:1,10,14	44:18,20 45:1,2	105:7 107:16	crc 1:22 165:23
67:11,11 69:1	45:5,21 46:4,6	120:11 135:7	create 55:17
71:6,8,12 72:13	46:13,18 47:13	136:23 142:20	created 11:24
72:19,24 74:12	48:9,13 49:16	143:7 144:2	128:19 137:14
74:14 75:2,5,7	50:4,6,13,17	146:2 160:13	140:8

[creation - deposition]

creation 127:8	73:14 125:23,23	38:3 48:22,24	32:5 55:2 73:14
credentialed	125:24 126:8,21	49:14,15 55:19	109:18 110:5
42:22 43:25	126:22 128:5,6	70:11,13 72:19	113:18
44:4	129:6,6,20,21,22	72:21 76:4,6,8	defendant's 17:3
credentials	130:1,5,10,11,16	76:24 78:2,6,7	17:10
42:12,13,14,17	130:17,22 131:1	84:1 90:18	defendants 4:8
criteria 55:2	131:3,4,10,13,16	94:23 98:6,7	50:20
68:7 90:4,10	131:17 132:10	108:25 115:25	definition 44:3
crr 1:22 165:23	132:16,18,21,22	116:3,14 128:10	delay 108:11,21
csr 1:22 165:23	133:15,19 134:4	137:17 138:7,13	109:1 119:21
current 49:12	134:7,13,18,19	139:15 141:3	126:21,22
101:5	134:25 135:4,11	154:5,14 156:2	145:17
currently 42:10	135:12,13,13,18	164:8,21 165:18	delayed 25:6
customer 112:7	135:20,21,21,23	days 36:18 49:6	133:4 145:10
112:8	135:24 136:1,17	49:11 53:23	delays 25:25
customers 99:4	137:10,13 139:5	91:3 100:14	124:1 153:13
cv 1:4 4:10 145:4	140:14,16,22	126:22,22 136:9	delete 118:21
cv01 90:2	141:4,25 142:6,7	155:23	depending 87:3
cv01-22-16672	142:21,22,23	dcn 1:4 4:10	89:20
87:19	143:6 147:4	death 97:3	depends 29:24
d	150:9,17 151:14	debt 86:5	49:23 90:18
d 3:1 4:1	153:7 158:17	decide 56:17	95:4 116:13
daily 3:12 29:2	159:2,3,7,21,22	declaration 3:14	depose 164:6
51:12 52:1 77:1	160:6,7,23,24	3:16 10:6,18,21	deposition 1:13
79:18,25 80:9	161:11 162:9,13	122:1,2,7,11,17	2:1,4 4:7,12,14
81:7 89:1 90:5,5	162:18	122:21 136:22	6:1 7:5 8:16
113:22 116:4	dated 3:11 9:10	141:11,14	9:21 10:5,25
138:12,19	79:20 86:15	144:24 149:10	16:2 17:12 18:5
data 32:21 87:8	dates 153:3	149:23,25 152:3	18:11 19:8,18,20
128:25 138:14	daughter 51:5	152:5,11 158:3,9	20:6,12 21:1,4
142:14 144:6	69:19 76:21	158:19 161:8	22:25 23:2,16
database 87:15	77:5	declarations	26:25 27:2,9
date 4:4 5:20	daughter's 79:7	10:8 15:24	40:20 60:2
11:14,16,17 14:3	79:12	declared 149:25	121:16 122:3
17:5 32:4 35:12	day 2:9 21:16	defamation 94:7	124:6 131:23
35:13 36:4	26:5 27:19 31:5	97:4	139:18 152:8,22
49:12 57:13	34:15,23,24,25	defendant 1:9	158:6 163:1,5
	36:16 37:2,14	2:5,18 11:19	164:8,10 165:9

[deposition - documents]

	10.10	150 10 10	1050001061
165:11,15	direct 13:10	159:12,13	135:9,22 136:1
depositions 93:3	directed 30:14	160:17 161:25	142:8 150:17
describe 11:11	direction 165:13	districts 96:9	docketed 62:13
24:11 29:13	directions 80:8	divulge 20:1	72:22 73:15,16
47:5 113:2	directive 50:12	145:1	75:10 104:8,17
described 51:25	directly 111:16	docket 11:16	104:19 108:12
103:7 158:19	director 1:8	32:1 37:4 38:8	108:17 114:12
description	discovery 16:10	47:9,19 48:7,14	124:13 128:6
110:6 118:9	16:10 92:25	48:21 49:1,4,16	132:22
deserves 117:17	discrepancy	49:25 52:17,21	docketing 52:8
designator 88:1	95:5	55:17,20,23	52:11 81:5,18
88:3	discretion 97:6	56:25 61:23	96:17 97:15
details 23:18,22	97:13	63:22 64:9,23	100:24 108:3,6
determine 38:9	discussed 21:18	65:21 68:24,25	114:9 124:10
56:2 62:16,17	discussing	69:6,13 72:20	dockets 64:24
74:17 79:6	158:10	73:6,9,12,23,25	69:14 92:24
82:20 83:25	dismissal 116:24	74:5,7,11,23	99:22 156:1,10
84:7 91:9,13	distributing	75:4 76:20 77:4	document 13:16
94:6 97:8 100:5	154:14	81:21 82:5,11,16	17:1,24 27:11
100:12 117:15	district 1:1,2	82:20 83:7,12	46:18 53:18
determining	4:10,11 15:13	85:21 86:2 87:1	57:17 58:3
52:5 67:3	24:13 29:6	90:24,25 91:1,2	92:19,20,21 96:5
developed 11:24	35:16 37:22,22	91:9,12,18,20	130:21 132:18
difference 45:12	38:18 44:18	92:15,17 93:6	134:2 135:22
131:20	47:13 49:16	97:19 98:18	140:12 144:1
differences	50:4,6,13,16	101:6,7,10,11	147:8 152:13
45:17	52:24 54:25	108:18 109:7,10	159:2 160:6,23
different 20:3	55:7,11,16 57:16	109:14,18,25	documents 10:4
27:18 70:2	57:21 68:6,21	110:3 113:4	10:24 16:1,13,15
94:17 101:25	71:20 84:10,12	114:19 115:15	17:4 18:1,4,17
113:24 132:23	84:17,23,25 85:2	125:23,24 126:3	18:23 19:7
132:24,25 133:5	85:6,16,19 86:24	126:8 129:6	26:13,24 47:22
139:8 153:2	87:5 88:4 89:25	130:16 131:7,11	55:21 66:11,12
difficult 8:6	90:9 91:25 98:2	131:12 132:11	74:1,8,16 98:10
dinger 110:25	103:3 104:7	132:16,19	98:19,24 99:2,19
dingers 110:13	108:3 114:7	133:10,13,15	99:23 134:7
110:21 111:14	119:6 124:2	134:8,12,13,18	146:1 155:2
	145:13 146:25	134:19,22 135:4	159:9 161:7
L	1	1	1

[doing - event]

doing 7:20,22	120:15,24 121:7	easily 85:5 111:8	employed 30:7
8:10,22,25 10:18	121:17 128:22	edit 29:11	employee 69:17
14:24 24:23	129:2 130:25	editing 30:5	employees 69:11
31:8 37:4 58:12	131:3 132:16	education 44:19	encompass
60:12 102:25	137:3 139:10,12	effort 68:5	15:20
103:15 109:2	139:16,20,22	either 22:1 29:2	ended 138:18
117:13 124:7	140:13,21	38:23 66:6	endurance 6:15
127:18 134:5	142:12 143:2,13	74:23 136:15	enlarge 161:1
137:17 138:19	143:14 144:15	154:5 155:25	ennis 2:24 4:14
139:23	144:16 146:9,16	electric 33:21	ensured 21:20
double 114:17	148:17,18 149:8	electronic 33:15	entailed 24:12
download 16:16	150:20 151:11	33:18 36:8 47:4	entails 13:25
93:11,12,23,23	153:16 154:1,3	47:8 49:18	enter 108:23
93:25 95:24	156:21 157:15	52:13 53:5,7,7	130:3 142:22
100:6 111:18,22	158:4,10 161:16	53:22 63:9	entered 107:13
downloaded	161:23 162:12	64:22 67:12	130:1
94:6	162:20,24	68:8,23 71:21	entering 161:11
drive 31:1	dukeevett.com	72:8,16,18 76:17	enterprises
duke 2:18,19 3:5	2:22,23	77:9 80:2 96:4	105:19
4:22,22 5:13	duly 5:8 164:5	156:6	enters 144:14
20:2,5 22:16	165:9	electronically	entire 81:11
27:10 29:22	duties 10:1	62:3 109:2	116:1 130:21
30:23 31:15,23	e	160:11,18	entitled 2:10
39:14,20 40:4,21	e 1:22 2:6,19,19	elmore 62:8	entity 9:16 50:19
42:20 44:7,25	3:1,2,9 4:1,1	63:12 74:19	entries 162:5
47:25 48:5,6,24	65:11 82:14	75:21	entry 109:14
49:25 51:2,4,9	83:2,2 100:20	email 30:2 66:3	equals 155:10
51:10,17,19	105:5 120:7	66:6 70:22	equivalent 156:7
54:12,24 56:7	131:24 132:4	86:14 93:17	error 117:24
57:11 58:9 59:4	165:5,22	94:23 95:7,9,14	118:5,6
59:11 68:12	earlier 9:22 16:5	112:10	esq 2:14,19,19
73:8,24 77:17,19	21:23 131:23	emailed 67:19	establish 152:22
78:11,22 80:22	158:10	70:24 94:13,15	establishing
81:1,3 98:15	ease 125:19	emailing 60:3	141:24
99:18 104:6,13	easier 80:17	emails 66:5 67:6	et 92:20
105:1,18 107:10	83:14	67:6,7,10 79:6,8	evaluation 71:15
107:21 109:4		embarcadero	event 165:17
115:12 118:7		2:15	
	•	•	

[eventually - file]

4 II 06.10	01.10.06.14.15	140.2 152.1 14	22.12.17.20.17
eventually 96:18	81:18 96:14,15	140:3 153:1,14	22:12,17 29:17
evett 2:18	100:23 110:22	153:15 154:6,7	29:21 30:20
exact 91:24	121:16,18	156:3	31:11,18 39:22
exactly 12:9	122:12 133:19	fall 87:22	40:10 42:18
21:19,24 22:23	142:15 158:2,6	fallon 34:2 39:3	44:2,21 47:23
24:4 43:2 45:16	158:11,22,23	falls 64:19 67:25	48:2,18 49:19
46:1 49:12	159:17,19,22	familiar 122:25	51:8,14 54:4,22
53:10 57:24	160:2,4,7,20,22	123:15 131:24	56:5 57:4 58:6
66:16 120:21	exhibits 27:6	132:4,6,7,10	58:22 59:8
124:24 135:19	39:17 161:7	159:10	60:25 68:9 73:4
135:24	expect 115:25	familiarity 14:7	73:19 77:15
examination	experian 87:8	famous 50:22	78:15 80:24
5:12 157:21	89:17	far 12:14 14:12	81:2 98:13
161:22	expires 164:25	27:22 33:10	99:15 104:4,10
examined 165:8	165:25	45:22 57:8	104:23 105:8
example 13:20	explain 42:13	58:10 66:23	107:6,18 108:14
14:7 29:5 31:24	87:13 122:8	76:24 80:4 92:7	115:8 118:1
35:15 36:17	131:9	105:15 119:22	120:12,17 121:4
146:21 147:11	explained 54:7	130:22 133:20	121:8 130:19
147:14	explains 87:25	140:4 142:9	132:13 136:24
examples 14:25	extent 19:22,25	152:18,20	138:1,2,21
118:22 129:14	22:13	fast 39:18 94:19	139:19 140:11
144:22,23	extra 119:3	federal 35:17	140:17 142:2,24
145:12,18,21,24	f	36:6,7,11,15	143:9 144:11
148:25	face 158:23	38:8 112:16,18	145:1 146:3
excel 11:13,21	159:18,21 160:4	112:19 113:4,5,8	149:5 150:18
11:24 127:8	160:21	113:16,20 115:6	151:8 153:19
exceptions 81:14	facsimile 2:16,22	115:14,18	156:14 157:10
91:16 96:17	fact 103:21	128:24 140:2	157:18,22 158:1
100:25 108:20	factored 142:14	145:12 159:9	158:7,8 161:14
114:4	factors 162:5	fee 28:5 92:11,12	161:18,20 162:5
excuse 42:19	facts 99:15	93:19	162:10,21
exhibit 3:11,12	105:10	feel 118:23	fetterly's 22:18
3:14,16 27:5,7,9	fair 6:13,23,24	felt 150:7	field 85:1
27:13,14 35:10	7:17 12:13	fetterly 2:14 3:6	fields 32:6 127:7
36:4 40:16,19,20	54:15 56:21	4:19,19 5:1,2	file 13:17 14:1
40:22,25 41:16	72:5 107:17	19:22 20:10,11	14:16 31:22
51:12 52:1 81:4	72.3 107.17	20:23 21:1	54:1 55:6 56:14

[file - folks]

58:14 60:14	78:2,8 81:24	143:25	filter 51:25
62:20,25 63:1,21	86:24 87:25	filers 133:2	113:3
74:3,15,16 92:25	88:19 89:21	files 13:23 64:12	filtering 84:23
100:16,17	91:23 92:3,4,18	65:20 73:1	final 133:6
131:24 132:4	93:7 95:3 98:3	74:25 88:13	find 12:9 70:7
135:23 136:23	98:10,19 99:2,9	147:3	82:8 111:8
140:15,23 141:6	99:19,23 103:17	filing 13:25	139:7
140:13,23 141.0	103:21,24	29:16 33:15,18	finding 145:9
144:1,3 146:24	103:21,24	33:21 36:8 47:8	fine 141:9
150:14 153:6	104.21,24 103.0	49:18 52:13	finish 7:21 37:16
156:19 159:9	105:15,25	53:5,7,8,22 58:4	firm 118:17,20
162:4	100.25 107.12	61:22 62:3,3	119:7
filed 14:1,2	115:13,20	63:16 64:7	first 5:8 6:7 7:10
18:14 24:2,5,13	,	65:11 67:12	10:17,19 12:4
24:25 25:2,13,19	116:14,20 120:6 120:7,25 123:20	68:5,8,23 71:21	16:19,20 17:2,3
1 ' '	·		
25:21,25 26:9,20 29:14 30:9	129:7,21,22	72:16,18 76:17	17:9 26:4,20
	130:17,22 131:1	77:9 80:1,2	57:22 79:12
31:10,17 32:18	131:4,4,10,17,19	82:14 83:2,2,13	81:15,17 82:5
32:19,24 33:7,8	133:19 134:4	91:3 92:11,12	84:9,18 85:25
34:8 35:5,6,11	135:18,20,21	98:22 100:14,15	86:8,22 89:13
35:14 36:3	136:17 137:10	100:20 103:2	105:23 111:6
37:21 38:4,9,11	137:13 140:14	104:2,22 129:20	121:19 126:3
44:16 46:4,18,22	140:22 141:4,25	133:3 142:10	136:17 146:21
47:6,7,20 48:3,8	142:7,20,23	147:7 150:9	149:1 156:24
48:15 49:4	143:6 144:2	153:3 155:23	157:9 158:1
51:20,23 52:22	146:1,4,14 149:4	156:2	160:16 164:5
52:23 54:8,11	149:15,20,22	filing's 105:5	fits 55:2 153:6
55:13,16,21 57:3	150:7,12,13,17	filings 16:4,8	five 39:20 78:13
57:18 58:19,21	150:24 151:5,7,9	30:13 31:25	86:21 89:2
59:3,6 60:9,20	151:14,17,20,25	32:14 36:6,11	90:10 121:8
60:24 61:3,9,12	153:7 155:19	45:9 62:13	flagged 110:13
61:16 62:17	156:1,12,17	63:16 68:6,22	flathead 34:1
63:3 64:9,15	157:8 158:19	85:16 99:14	39:3
65:21 70:3,7	159:3,22 160:7	116:3	floor 2:15
71:11,11,19	160:11,19,24	fill 95:13 124:19	folder 63:4
72:21 73:2,17	161:11 162:9,13	134:22 152:25	folders 62:20,25
74:2,4,9,12,16	filer 53:24 99:8	filling 134:5,17	folks 69:5
75:5,17 77:21	109:2 110:4	137:6	
<u> </u>	I	I	1

[follow - go]

follow 45:10	frame 71:11	general 15:2	32:1,9 36:17
67:24 96:3,4	146:1,12,14	21:6 23:24	37:5,10 39:8,14
115:25 119:21	franchising	27:25 89:15,17	40:13,18 47:12
157:19 161:16	35:25 36:19	123:1,16	50:23 51:5
followed 116:5	francisco 2:15	generally 17:20	53:14,24 55:11
148:9,12	frequently 36:14	generate 38:16	55:14 56:1
following 55:4	76:22 116:11	100:1,4 127:4	58:13 59:11,17
72:15 96:10	friday 22:2,2,5	generated 127:2	59:19 60:10,13
follows 5:10	37:17,23 38:4,10	generates 127:7	62:11 64:11
foregoing 164:7	38:11 78:2	getting 25:2,21	65:2,7,12 67:2
165:9,14	149:4	62:12 65:16	68:5 69:11,23
foremost 6:7	front 16:13	69:10 70:19	70:1,6 71:8
forfeitures	full 5:18 11:17	83:6,7 85:24	72:12,18,24
113:25	16:25 28:14	95:2,21 96:25	74:14,20,24 76:7
form 95:13	65:23 68:2 74:5	97:12,16 128:15	78:11 81:4,8
128:25	81:21,23 82:10	129:3 131:4,22	82:17 83:5,9,23
format 28:16	82:12,22,24	135:19 156:10	84:15 85:7
forward 7:13	101:12,13 109:1	girdner 2:25 5:3	86:19 87:24
65:8 117:20	110:2 126:9	5:3 21:4,13,18	89:23 94:17
foundation	135:22 136:11	22:5,14,19,21	95:24,24 96:14
31:19 44:5	165:14	23:8,14 137:24	97:21,23 99:21
47:24 54:23	fully 47:4 86:9	give 32:3 47:14	100:16 101:21
57:6 58:7 68:11	functional 156:6	52:18 62:25	101:25 102:4,14
98:14 99:16	further 86:6	63:18,20,22	102:20,22
104:5,11 105:9	147:24 148:10	85:22,22 87:11	104:13 110:9
107:8,19 115:9	148:12 161:15	88:13 91:20	112:1 113:15
118:2 120:13,18	161:22 162:21	94:22 101:8	114:6,7 118:20
136:25 140:18	165:16	106:2 128:24,25	123:18,22,23
142:4,25 143:11	future 7:6	154:23	124:18 125:4
146:6 149:7	g	given 32:2	133:16 134:21
151:9 156:15	g 2:14 4:1	139:20 164:13	135:17 141:11
157:11	gal 79:9	gives 91:21	141:13 144:16
four 36:18 86:21	gallatin 34:1	giving 50:12	146:9 148:5,18
102:3 145:18,21	gary 90:21	go 6:4 7:13 9:1	153:16 155:4
145:22 147:21	gem 62:8 63:12	14:12 15:6	156:18 157:18
149:16 150:8	74:19 75:21	16:17 17:17,23	158:22 159:17
161:6,7		21:9,16 27:7,20	160:2
		27:21 30:23	
			<u>'</u>

[goes - idaho]

goes 27:24	guess 17:11	held 4:12	i
117:15	73:24 76:7	help 7:23 17:20	icon 101:23
going 6:11 11:5	99:10 101:8	20:14 110:18	icourt 70:5
12:15 13:1	105:3 143:15	hey 58:2 84:25	83:17 98:1
22:25 24:4,19	146:13	118:9 134:1	99:22 101:16
27:5 29:16 35:3	guessing 130:7	high 146:21	108:12 109:7
37:5,24 38:4,14	guidelines 116:4	149:2	120:16,21
39:15 43:19	guyon 89:10	highlighted	123:18 124:24
47:2 49:17 51:4	h	149:17	131:11 132:7
52:5,13 53:21	h 3:9	hired 28:13	135:7 156:9
55:1,6 62:15	half 37:3	hit 84:14,24	icourts 14:18
64:22 68:19,20	hall 69:18 76:21	hmm 71:2 128:9	70:4 72:6 83:9
75:15,21 76:4,10	77:4 79:7	128:14	83:16 98:17
76:17 81:9 84:1	hallway 102:4	hold 66:11,15,25	101:22 126:2
90:3 91:10	hand 54:24 55:7	67:4	idaho 1:2,8 2:8
92:18 93:22	55:23 56:14	holiday 38:2	4:11 5:23,24
97:8 98:7	165:18	78:5,7	12:12 13:1,22,25
100:17 103:8	handful 67:23	home 37:1,16	14:9 21:14
108:8 112:6	handle 110:19	124:14,19,23	24:14 25:3,11
115:1 123:24	hands 58:15	133:7	28:19,22,23,24
140:1,8 154:25	60:15 99:4	hone 108:4	37:22 38:8,18
155:1,7 156:9	happen 24:19	honestly 12:8 67:13	42:16,21,23,25
158:22 159:17 160:2	34:25 97:21		43:12,17,25
	happening	honing 52:24	44:11,16 45:13
good 5:14 16:19 43:14 121:5	110:16	hopefully 6:5 68:14 125:6	45:20 46:4,6,8
gotcha 53:16	happens 142:9	hour 2:9 6:18	46:11,19,23
gotten 79:24	happy 139:5	39:16 136:11	48:10 51:21
grab 86:11	hard 127:17	hours 36:25 37:2	62:2 67:25
graduate 146:22	159:16	37:7 77:14	69:12,24,25 70:6
149:2	harvest 35:24	133:11 136:10	70:7 71:9,13,21
great 7:20 19:13	36:19	huge 95:5	71:22 72:3 80:2
35:24 36:19	he'll 155:7	huh 8:6	89:15,16 90:9
133:3 161:19	head 8:4,5,19	huhs 8:5	103:17 105:5
green 130:8	19:11 34:5	hundreds 15:9	106:19 112:19
ground 6:5	heading 130:10	88:11,24,25	119:17 122:24
group 138:6	130:13,15	90:14,15	123:1,17 124:2
9-0 -0		, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	138:14 146:22
			154:10,13,19

[idaho - job]

155 10 156 12	60.16.04.0	02 02 05 15 02	112.0
155:19 156:13	69:16 94:9	83:22 85:15,23	intense 113:9
159:12 164:22	95:22 105:4	86:1 87:1 91:4	intent 68:15
164:24,24 165:2	107:5 110:4	91:20 92:3	interest 165:16
165:6,24	included 15:18	109:17,21	interested 50:18
idaho's 14:21	28:20 50:19	114:14 115:3	interpret 140:3
44:20 45:1	69:10 71:22	116:10 117:5	interpretation
idea 43:14	73:18 74:2	124:10 125:14	152:24
105:18 113:14	75:13 100:6	125:18 127:6,9	interpreted
119:13,15	including 35:8	127:13 128:15	140:4
129:16 140:13	138:14	128:18 131:11	interrogatories
ideas 153:2	inclusive 164:9	138:25 144:9,13	16:21,23 17:3
identified 51:11	incorporated	144:19 154:24	introduction
72:21 158:18	48:3	156:11 157:1	52:2
identify 83:4	incorrect 118:19	initial 52:22	investigation
134:7	119:7	92:25 155:18	71:16
identifying 58:1	index 74:8	initially 28:13	issue 25:12
ignore 92:21	indicated 155:25	43:18	51:18
immediate 23:23	indifference	initiate 25:10	issues 43:21
24:9,12 105:23	95:5	151:6,21 156:12	119:8 148:7
106:2	individual 50:19	initiated 48:9,16	i
importance	91:15 113:7	73:1 119:16	j 42:5
103:13	127:25	151:25	•
important 8:3,5	individuals	initiates 151:17	jane 69:18 76:21 79:7
19:16 45:5	50:22 97:11,14	initiating 48:16	
82:23 96:19,22	113:19	injunction 3:15	janquart 42:1
97:8 150:8	info 39:10 73:16	3:18	jefferson 34:2
151:16 157:14	91:6	instance 15:12	jimmy 13:8,11
impression	information	17:22 30:8 34:7	13:12 137:23 job 7:20 17:15
_			100 ''/U /'' 7
145:24	16:4,9 21:5	34:11,13 35:2	•
145:24 inaccurate	16:4,9 21:5 24:20 26:2	34:11,13 35:2 113:25 114:19	25:23 44:24
	· ·	·	25:23 44:24 45:1 58:18
inaccurate	24:20 26:2	113:25 114:19	25:23 44:24 45:1 58:18 59:14 60:19
inaccurate 103:20,23	24:20 26:2 28:25 29:10	113:25 114:19 126:5 127:16	25:23 44:24 45:1 58:18 59:14 60:19 61:11,14,16,18
inaccurate 103:20,23 118:24	24:20 26:2 28:25 29:10 43:15,16 57:13	113:25 114:19 126:5 127:16 instances 118:15	25:23 44:24 45:1 58:18 59:14 60:19 61:11,14,16,18 75:11 80:8
inaccurate 103:20,23 118:24 inbox 86:14	24:20 26:2 28:25 29:10 43:15,16 57:13 59:23 63:5 65:7 65:23 66:3	113:25 114:19 126:5 127:16 instances 118:15 instruct 19:24	25:23 44:24 45:1 58:18 59:14 60:19 61:11,14,16,18 75:11 80:8 106:10 116:2
inaccurate 103:20,23 118:24 inbox 86:14 156:6 include 24:21	24:20 26:2 28:25 29:10 43:15,16 57:13 59:23 63:5 65:7 65:23 66:3 68:18,21 69:12	113:25 114:19 126:5 127:16 instances 118:15 instruct 19:24 instructed 7:16	25:23 44:24 45:1 58:18 59:14 60:19 61:11,14,16,18 75:11 80:8 106:10 116:2 154:18,22
inaccurate 103:20,23 118:24 inbox 86:14 156:6 include 24:21 28:9,15,18 30:2	24:20 26:2 28:25 29:10 43:15,16 57:13 59:23 63:5 65:7 65:23 66:3	113:25 114:19 126:5 127:16 instances 118:15 instruct 19:24 instructed 7:16 51:24 80:7	25:23 44:24 45:1 58:18 59:14 60:19 61:11,14,16,18 75:11 80:8 106:10 116:2
inaccurate 103:20,23 118:24 inbox 86:14 156:6 include 24:21	24:20 26:2 28:25 29:10 43:15,16 57:13 59:23 63:5 65:7 65:23 66:3 68:18,21 69:12 69:24 70:16,20	113:25 114:19 126:5 127:16 instances 118:15 instruct 19:24 instructed 7:16 51:24 80:7 instruction 53:1	25:23 44:24 45:1 58:18 59:14 60:19 61:11,14,16,18 75:11 80:8 106:10 116:2 154:18,22

[jon - legal]

jon 4:19 5:2	kiosk 83:10,19	106:13,15,16,18	labeled 137:10
20:10,11 40:10	83:20,23 84:16	106:19,21,22	labor 38:3 78:7
47:25 51:7	84:23 101:22	107:9,22,25	lacks 31:18 44:4
80:22 128:22	103:3,9 104:15	108:21,23 112:1	47:24 57:6 58:7
137:23,25 138:1	104:16 123:12	113:2,3 116:16	68:10 98:14
138:2 139:11,17	kiosks 102:2,18	116:23 117:14	99:16 104:5,11
143:13 148:17	knew 51:10	117:18,19,22	105:9 107:8,19
153:16	know 6:9,19,19	117:18,19,22	115:9 118:2
		123:8,13,14	120:13,18
jon.fetterly 2:17	9:11,12,14,16 10:13 12:1,14,23	125.8,13,14	136:25 140:18
jonathan 2:14			
jot 56:19	14:16,18,20	128:2,4,20,21	142:3,25 143:10
judge 7:2,6 32:5	15:25 19:12,16	129:1 130:4,14	146:5 149:6
45:22 110:5	21:25 22:24	131:15,20	151:9 156:15
140:2	23:20 24:18	133:11,12,19	157:11
judge's 91:22	25:21 27:23	136:9,11 137:12	language 159:11
judicial 13:22	33:1,6,10,14,16	137:14 140:20	laptop 56:22
14:9	33:17,19,20,23	140:21,24 141:7	large 71:8
jump 138:21	33:24 34:4,5,6	141:23 142:6,9	late 26:16 78:2
jumping 51:5	34:15,24 35:1	144:9,15,18	133:12
k	36:7,21 39:9,15	145:22,25	law 89:11 118:17
kayla 79:13	39:20 42:2	146:14,21,23	119:7
ked 2:22	43:24 45:15,22	147:2,3,5 148:2	laws 150:1
keely 2:19 4:22	45:23 46:5 47:1	148:21 152:18	lawsuit 23:3,16
73:5 121:4	48:3 49:11 52:7	152:20,25	23:17,19,19,21
130:19 157:17	53:5 55:14,15	155:13 157:2	24:2,5,7,12,17
158:2	57:8 58:10	162:4,17 164:10	24:21,24 26:19
keep 7:22 12:24	64:19 65:13,15	knowledge 14:7	46:12,13 66:18
27:5 66:24	65:19,22 66:8,14	30:13 79:22	66:22 156:25
97:20 124:20	66:20 67:17,25	107:4 108:11	lawyer 129:7
161:18	69:5,18,21 70:10	knows 144:13	learn 65:7 68:6
keywords	70:12,13 71:5,10	kootenai 64:19	learned 43:16
110:13,25 111:6	71:14 72:2,4,10	65:1,10,14 67:11	44:24,25
111:7	76:7,24 80:4	67:11,21 75:2,5	learning 30:8
kind 8:21 12:25	82:3 84:2 85:22	75:6 76:16 79:9	left 129:20
32:21 46:1 65:6	86:5 89:23	1	130:18,20,22
71:15 87:13	91:25 93:9	l 119:3	133:20
91:19	95:15,15 96:20		legal 20:6 26:18
)1.1)	99:5 105:15,24		41:11 46:18,19
	I .	I	

[legal - manual]

46.22.40.46	07.4.101.22	100 10 104 10	
46:23 48:16	97:4 101:22	123:12 124:13	m
57:5 58:8,23	113:9 127:17	124:22 125:21	m 3:2
59:3,10,13,15	134:6,16	127:16 129:13	madison 34:2
61:3,10 104:11	lived 5:24 65:2	130:25 131:3	39:3
104:25 107:20	loans 113:13	133:18 134:8	magic 82:22
110:6 115:10	location 84:14	136:4 144:6	magistrate 50:9
143:12 146:5	85:1	148:24	52:15
149:7 151:10	lodge 7:3	looked 10:6,11	mailing 67:20
156:16 157:12	log 83:17	10:16 11:1,2	main 13:13
157:12	long 5:24 6:16	18:9 38:10	93:13 102:6
legislature	12:7 31:21 34:6	41:15 49:9	maintain 9:8
146:23 148:16	62:22 71:5,12,19	56:25 89:1 90:8	53:19
leighton 2:14	94:14	90:12 115:24	making 65:18
4:20	look 8:20 10:10	122:4 145:14	141:19,22
letting 7:20	10:12,22 11:6	161:6	142:18 143:5,16
22:24 24:18	13:4 17:22 32:2	looking 10:23	146:17 149:3
lewiston 67:25	35:15 36:14	24:8,12 40:15	155:8
likes 143:13	47:14,16 48:15	52:8,11 56:25	malpractice
likewise 156:16	50:14 53:11,12	64:16 67:2	110:6
limiting 50:5	55:3 56:9,11,17	82:17 84:5,22	management
line 54:13,18	63:18,25 64:3,6	85:11 86:8,23,24	14:21 98:11
58:13,14 60:12	64:6,12 67:5,7	87:23 88:15	105:7 107:16
60:14,16 72:14	67:16 70:2	93:4 97:20,25	120:11 136:23
87:18 160:3	78:12 79:5	98:18 99:22	142:21 143:8
linked 124:25	80:12,15,20	109:6,9 115:6,14	144:3 146:2
list 11:8 15:7,8,9	82:17,18,22 83:4	123:7,14 124:21	147:1,8
15:15,18,23 27:6	84:9,10,15,17	126:1 134:6,16	manner 26:21
55:17,20,24 86:1	85:12,25 87:4,6	151:24	manual 3:12
86:22,24 89:6,13	87:10,14,21	looks 11:12 17:6	8:17,21 9:6,6,8
89:16,18 94:22	88:10,10,11,24	27:14 35:20	9:18,20 10:4
99:23 114:8,12	89:7,8,23 90:16	36:2,5 80:11	15:22 28:16
114:24	90:17 91:8 94:3	86:19 92:14	40:17 41:1,7
litigation 66:11	94:3 96:13,18,24	101:6 125:19	52:2,4 79:19,25
66:15,24 67:4	97:22,24 98:7	128:11	80:9 89:2 90:6
123:2,16	100:13,22	lot 13:13 49:8	91:16 94:4
little 6:6 7:4,10	106:10 110:22	113:8 145:23	113:23 114:5
18:21 30:5	112:21 113:3,6	lumped 123:9	116:4
60:10 79:15,15	114:16,18 121:2		110.1
		<u> </u>	1

[manually - needed]

manually 103:6	means 25:17	missing 130:12	move 121:4
mark 40:18	48:4 73:16	130:24	moved 63:11
marked 7:7 27:9	88:18 104:20	missoula 29:15	multiple 49:14
40:20 121:16	107:14 131:17	misstate 68:13	72:21 139:1
122:12 136:15	135:2,6 144:1	misstates 59:9	multitask 16:18
158:6	150:16 156:24	68:10 142:2,25	mycourts 124:23
marshall 13:10	meant 24:9	144:11 149:6	mycourts.idah
15:17 23:23	140:9 150:13	150:19 162:11	124:23
116:10 117:5,15	meet 20:5,9,11	misstating 59:18	n
137:24	20:25 68:7	mitchell 2:19	n 3:1,2,2 4:1
martha 50:23	90:10 116:3	4:22	42:5
matter 2:10 4:8	meetings 19:19	mobile 89:15	name 5:18 42:4
10:15 64:14	27:1	modify 118:12	51:7 65:24
89:14,16	meets 90:3	molly 2:19 4:22	67:18 69:20
mccullough	mem 2:23	moment 10:22	79:12 85:22
20:13,16,22	member 42:16	monday 22:1	91:22,22 110:4,5
154:4,17	42:21,22,25	37:17,24 38:1	110:5 112:9
mean 15:1 18:6	43:12,17 44:1,4	montana 28:19	119:3,7
19:3 30:25	44:8,11 102:17	28:22,23 29:1,5	named 164:7
31:25 33:4	memory 8:21	29:5,6,9,15 30:8	165:8,12
34:11 42:22	mentioned 15:7	30:10,14 31:9,24	names 91:21
44:10 46:1	22:10 24:8	32:12,23 33:14	133:23
56:12 69:25	40:17 148:3	34:7,20 35:2,9	nature 125:22
73:9,22 81:24	meridian 5:23	35:11 36:11,15	129:5
82:6 87:16 88:4	met 20:10	38:21 39:1 65:6	necessary
88:18 92:10	metadata 128:23	106:13	109:23,25
93:11 101:3	micron 55:1	montana's 32:13	156:11
102:16 107:11	109:11	33:20 36:7	need 6:18 7:5 8:8
111:18 118:6	middle 77:20,23	month 34:17	9:1 17:21 33:11
119:1 122:17	midmorning	35:4,6 62:9	43:24 48:1
125:25 130:5,13	37:9	63:14 74:21	56:10,21 80:22
130:14 131:19	mine 89:11	75:22	83:16 84:20
135:14 140:7	minor 30:5	monthly 29:2	85:9 110:1,18
143:19 150:21	minutes 39:21	morning 5:14	111:2 119:24
154:13 156:21	78:13 121:8	124:10 126:4	129:1
meaning 62:25	153:17	mornings 37:1,4	needed 56:23
120:10,15 129:7	missed 49:8	motion 3:15,17	63:5 76:15 80:8
	130:9,13,15		35.5 70.15 00.0
	1	I.	I

[needed - okay]

102:8 117:25	non 50:19 91:15	objection 19:22	office 2:20 13:7
118:12	97:11,14 113:7	22:12 29:17	13:13 22:18
needing 66:12	127:25 151:25	30:20 31:11	73:17 103:1
needs 144:8	nope 121:24	42:18 44:2,21	104:8 118:16
154:24	notary 2:7	47:23 48:18	161:25
never 75:19	164:24 165:6,23	49:19 51:14	official 1:7 42:13
76:13 77:23	note 13:16 150:8	54:4,22 56:5	58:3 95:13
79:24 99:6	noted 145:15	57:4 58:6,22	oh 11:8 14:10
new 31:25 83:2	notes 56:19,23	59:8,18 68:9	16:10,19 26:13
90:17 100:20	78:12 129:13,14	73:4,6,19 77:15	56:11 88:15
116:3	notice 93:3	98:13 99:15	89:23 94:20
newly 32:24 33:7	notified 118:23	104:4,10,23	95:23 97:15
33:8 34:8 35:5	november 1:14	105:8 107:6,18	102:22 111:4
44:15,16 48:8,15	2:9 4:5 17:6	108:14 115:8	112:1,11 113:5
49:4 70:7 71:11	86:16 89:4	118:1 120:12,17	116:22 122:16
71:19 72:21	163:2 164:8	136:24 140:11	130:25 138:2
73:2 74:12 75:5	165:18	140:17 142:2,24	148:18
75:17 86:24	number 11:15	143:9 146:3	okay 5:16 6:19
156:12 157:8	32:4 49:8 63:17	149:5 150:18	6:20 7:7,8,13,13
news 1:4 3:14,17	73:14 88:9	151:8 156:14	7:14,24,25 8:10
4:8,21 5:1 9:3	90:22 98:8	157:10 162:10	8:11 9:2 11:21
9:17,19 16:24	101:1 112:9	objections 6:25	14:20 15:22
20:18 23:4,8,15	125:21 129:5	7:3,9 31:18	17:24 19:6,15
41:12 44:12,14	130:16 136:9	60:25 143:10	22:4,22 34:3
45:8	141:10 152:23	144:11	37:13 39:19,23
newsworthy	158:2	obscure 160:13	40:11 47:9 48:5
50:25 52:6 94:7	numbered 164:9	obscured 159:12	51:8 55:4 60:2
96:19,22 97:5,8	numbers 13:4	observed 54:14	62:21 64:18
113:10 116:8	15:9,19,20,21	obtain 36:11	65:18 66:20
145:16 147:23	102:1	47:6 50:8 63:6	67:15 72:16,17
148:11	numerical 89:19	156:10	78:11 79:14
nez 64:19	numerically	obviously 71:8	80:16,20 81:16
nice 124:17	85:7	84:2 88:23	84:12 86:10
night 37:23 38:4	0	90:10 96:19,21	87:7 88:6,15,23
77:20,24	o 3:2 4:1	101:13 150:21	90:2,20 91:1,8
nobody's 119:5	oath 122:19,20	152:19	92:13 94:14,25
nods 8:4	152:12 164:6	october 36:4	96:2 97:15
		40:16	101:15 105:24

[okay - pause]

			I
110:9 112:11	94:22 97:14	44:3,22 47:24	159:18,21 160:4
113:5 117:1	104:14,16	48:19 49:20	160:21
121:2 122:10,19	105:14,16	51:15 54:23	pages 3:11,13,15
123:11,25 125:5	110:20 126:11	56:6 57:5 58:7	3:18 164:9
125:9 126:10	130:8	58:23 59:9 73:7	paisner 2:14
130:25 131:1	online 11:10	73:20 77:16	4:20
139:16 141:16	12:7,8,13,15,17	98:14 104:5,24	paper 47:15 53:7
144:21 153:19	13:1,6 14:1	105:9 107:7,19	53:22 56:13,15
153:20 154:1	32:12 38:25	108:15 115:9	61:22 62:3 80:1
155:17 159:5,20	47:2 68:4,5 70:1	118:2 120:13	83:15 91:3 96:5
162:25	77:12 97:22,23	132:14 136:25	98:22 100:15
old 67:6 70:1	125:23,25 128:6	140:12 142:3,25	155:23
85:21 89:10	129:6 130:16	143:10 146:5	paragraph 81:8
100:14	132:11,17	156:15 157:11	81:11,13,15,17
olden 155:23	133:16 134:14	162:10	100:23 123:22
older 87:2	134:18,19 135:4	owyhee 62:8	141:11,13,19
omundson 1:7	136:1	63:11 74:19	142:13,19
2:24 4:9,23,24	open 84:20 86:6	75:21	144:23 153:11
23:4	86:8 91:13	\mathbf{p}	153:11 158:12
once 12:12 13:5	126:2	p 4:1	158:18
32:19 34:16,17	opened 73:18	p.m. 2:10 4:5	part 14:19 58:18
46:18 54:4	130:21	37:23 39:24,25	60:19 80:7,11
55:15 62:7,9	operator 147:12	39:25 40:2	103:15 106:10
63:11,14 65:3	opinion 157:12	77:21 78:17,18	110:1,3,19
74:20 75:3,15,22	opinions 141:18	78:18,20 121:11	114:19 130:12
76:4,6,11 84:11	opportunity	121:12,12,14	131:21
85:3,18 89:20	19:17 40:6	153:21,22,22,24	partially 159:12
93:10 100:4	78:24 79:2	163:2,5	particular 22:1
108:20 114:11	options 101:25	pacer 114:18	61:11 110:18
116:15 133:3	orange 136:15	118:18	130:12 147:4
138:17 141:8	order 30:1 89:20	page 3:4,10	particularly
148:1	130:3	57:22 80:20	94:5 116:7
one's 35:21,22	organized 39:18	81:5,18 86:8	parties 91:21
ones 21:11 47:13	original 18:7,10	96:16 100:23	party 16:24
58:19,20 59:1	18:14,25 19:3,4	110:22 111:3	46:13 85:22
(0 0 00 04 (1 1		110.22 111.5	password 93:18
60:8,20,24 61:1	128:25	146:22 149:3	1 =
60:8,20,24 61:1 62:6 63:18 82:9	overbroad 29:18	146:22 149:3 150:5 158:23	pause 51:3
· · ·		146:22 149:3 150:5 158:23	1 =

[pausing - probably]

	phrase 73:6	portals 108:1	43:1,13,17 44:1
pausing 121:5 pay 95:25	107:10 115:10	portion 96:17	44:4,8,10,11
payette 62:9	phrased 76:1	97:16 158:9	105:19,25 106:7
63:12 74:20	143:15	positive 14:3	106:10,14,17,20
75:22	physically 155:4	65:17 66:2	106:25 107:4
payment 92:5,7	place 80:1	101:4 105:21	117:16 119:16
92:10 95:7,15	165:12	129:19	122:25 123:6,9
payments 92:8	placed 57:17,19	possible 35:4	123:13
penalty 150:1	placeholder 7:4	possibly 35:1	pretty 11:2 30:4
pending 6:22	plaintiff 1:5 2:14	67:1 106:1	34:15 45:10
people 58:13,14	3:14,17 4:20	post 2:20 116:9	64:13 117:12
60:13,13 65:6	11:19 32:5	potentially	145:16
100:16 102:13	73:14 109:19	50:14 104:25	previous 32:9
102:16 133:11	110:4 113:18	146:4	primarily 154:9
perce 64:19	plaintiff's 17:2	practice 96:11	155:17
percent 82:6,8	planes 147:16	pre 70:5 72:6,8	print 47:10
perfect 5:17	please 4:17 5:5	72:16,18	49:16 55:20
40:24	5:17 6:9 80:21	preference 80:18	printed 83:12
period 98:3,6	80:24,24	prefiled 107:5,7	prior 12:15 13:1
periods 136:11	pllc 2:18	107:11	24:24 42:6 47:1
perjury 150:1	plug 98:3 101:17	preliminary	49:17 52:12
person 25:10	plus 93:11,12,22	3:15,18	53:4,21 64:22
28:12 55:6	93:23,24 94:4	prep 9:21 18:11	68:8,10,13,22
64:24 67:18	95:24 100:6	20:23	71:21 76:16
70:19 75:4,6	point 7:5 25:9	preparation	142:2 143:1
109:10 118:17	69:4 71:18	122:3	144:12 149:6
154:8	75:14,20 76:3,10		150:19 162:11
personal 15:10	77:2 90:23	10:5,25 16:1	165:8
personally 54:14	117:8 121:5	18:5 19:8,19	prisoner 113:12
72:12	133:9 141:4	20:6,12,14 21:16	114:21
petition 45:13,19	147:22 156:8	26:25 27:1	pro 109:1,10,19
petitions 45:15	pop 51:7	preparing 17:12	113:12 129:7
45:16 46:1	portal 98:1,17	152:8 154:13	133:2
52:23	101:16 108:13	present 2:24	probably 37:2
phil 42:1	109:7 120:16,21	26:18	65:12 79:10
phone 20:14,15	123:19 124:25	preserve 66:12	81:14 84:3
95:7 112:9	132:8 135:7	press 32:15,19	116:22 148:15
	156:9	33:9 42:16,21,23	

[problem - read]

problem 138:4	91:17 111:22	publish 38:23	questions 6:12
procedure 17:16	118:18,19,21	82:13	7:1,21 8:12
17:23 21:9,13	progressing	pull 40:18 80:16	14:14 15:2 21:6
112:20 113:2	148:13	80:22 87:5	21:7 25:20
122:16 141:8	propounded	114:14	46:15 59:22
proceeding	164:12	pulled 144:19,22	62:10 72:14
46:19,23 48:17	protected 22:15	pulling 131:10	81:10 98:21
151:6,18 152:1	protection 20:4	purpose 95:21	123:24 152:11
proceedings	provide 7:22	put 7:4 9:14,16	157:19 160:3
26:12 29:8 48:9	20:3 26:1,2	14:10 27:17,19	164:11,12
51:3 151:21	36:12 52:14,20	29:12,25 30:1	queue 105:19,25
process 6:6	53:25 57:12	54:1 56:23	106:7,10,14,17
13:25 22:6,7	61:23 67:18	61:12 66:7 70:4	106:20,25 107:4
29:13 39:8 47:5	69:9 99:23	76:19 80:24	119:16
49:2 53:23 54:2	106:25 129:5	82:11 88:11,12	quick 6:5 22:12
55:11 61:21	139:13 141:18	93:17 102:1,10	38:15 39:15,17
63:8,13 64:13	155:1,25	111:7 122:6	67:8 86:11
65:13 67:21,24	provided 12:2,4	126:4,8 127:6,9	120:1 121:6
69:4 70:13	13:5 15:15 26:4	127:13 128:17	157:19
82:19 83:25	26:8,16 41:3	130:5 133:15	quickly 25:21
84:6 94:17 95:1	50:1 74:15 77:8	135:11 142:7,21	48:13 56:19
96:3 100:7	90:4 108:1	puts 30:18	78:9 145:5
103:7 107:22	123:1,17 127:10	128:18	quite 39:16
113:21 114:7,9	145:12 162:14	putting 41:19,21	43:22 146:13
117:14 119:13	provides 108:2	148:8	brack r
119:22 143:25	providing 116:2	q	r 4:1 42:5
145:11	144:10 158:12	qualify 123:5	raise 24:25
produce 139:4	158:16	question 6:8,13	25:18
produced 138:24	public 2:7 24:10	6:22,22 7:16	raised 25:11
139:2,6	27:21,25 44:13	19:23 25:12	range 87:22
production 17:4	44:15 50:18	48:1,2 60:7 61:7	reach 111:17
17:11 138:23	83:22 102:17	75:25 105:17	reached 118:8
professional	122:25 123:3,5,8	131:22 143:4,5	118:12
42:14	123:12,18 157:4	143:13 146:8,13	reaching 111:23
program 11:9	164:24 165:6,23	153:10 158:2	read 16:4,25
14:17 27:20	public's 123:16	questioning	18:13 45:4 81:8
61:13 82:11	157:2	60:16	81:13,14 106:1,3
83:9 84:21			

[read - report]

119:25 123:23	40:3,5 59:7	relate 18:1	25:23 27:15,16
146:9,11 159:10	78:15,17,21,23	related 26:18	27:17,18,21,24
164:10	79:17 121:9,11	32:18 41:7	28:6,10,18,19,21
reads 30:6	121:15 138:20	44:20 46:15,23	28:22,24 29:3,4
ready 95:11	146:11 153:21	119:7 140:14	29:8,12,16,24
97:20,22,24	153:25 154:2	147:11 152:23	30:13,16,18,19
real 6:5 22:12	163:3 165:15	relates 17:25	30:24 31:2,6,9
38:15 39:14,18	record's 72:12	22:13 45:8	31:24 32:1,21
67:8 86:11	recorded 4:14	81:15	34:9 35:5,9
120:1	recording 4:3	relevant 17:12	36:12,18 37:24
really 7:23 8:3	40:2 121:14	17:14,15	38:5,10 39:11
14:22 18:8	153:24	remember 10:18	40:15,16 41:7,8
43:22 66:23	records 43:19	12:9 21:19 22:2	41:9,15,18,18,22
102:13 116:13	red 126:11	22:3,23 24:4	44:12 45:15
124:17 132:21	136:16	43:2,20,22 49:11	46:3,5 48:7,8,14
138:19	reds 136:4	53:10 57:24	48:21 49:1,4,17
realtime 59:19	reduced 165:13	60:16 64:8	50:3,6,8,11,14
reason 133:4	reference 111:2	65:25 66:7,16,19	50:20,24 51:11
recall 21:10 61:5	referencing 16:6	66:23 67:14	51:12,20,24
132:1 158:14,20	97:18	69:19 79:13	52:17,21 55:3
receipt 95:8	referred 9:23	90:12 91:24	59:1,2,5,12 61:2
receive 26:9 28:5	referring 14:4	102:23 138:18	61:2,8,12,16,23
28:8 35:5 47:19	64:2 81:19	138:20 148:14	62:18 64:21,23
48:7 52:9,12	101:4	148:19 152:10	65:4,8,21 67:10
65:19 74:11	refers 101:10,11	remembered 2:3	68:7 69:16
75:3 76:21,22	reflect 159:2,21	remind 137:25	70:14 72:20
83:1,3 108:23	160:6,23	remodeled 102:9	74:11,17,17,23
received 9:9,18	reflected 47:22	remote 1:13 2:1	75:3,10,12,13
9:22,24 10:19,20	161:4	2:3 4:6 124:11	76:19,25 77:20
26:5 28:11 57:9	refresh 8:21	remotely 2:13	78:1 81:22 82:3
57:12 66:10,14	regarding 18:20	4:13	82:5,10,21 83:7
79:19,20	23:2,3	removals 112:23	83:12 84:1,4,5,8
receiving 25:13	register 83:18	rephrase 48:5	84:20 86:2,9,12
25:25 26:19	regular 131:13	77:17	86:15 89:3,3
recognize 159:15	133:3	replace 41:24	90:5,24,25 91:1
record 4:4,6,18	regularly 93:9	report 3:11 8:23	91:2,9,10,12,14
5:18 8:9 13:22	rejected 99:9,14	8:24 11:17	91:16,19,20
14:9 39:22,24		18:15,18,24	92:17 96:18
	I		

[report - right]

97:1,9,10,13	reporter 2:7 5:5	repository 69:12	response 7:22
98:6 99:1,5,13	7:23 36:10 42:7	69:24,25 70:7,8	16:20 17:2
99:19 100:2,4	42:9,10 59:5	71:13,22	144:10
101:14 103:25	61:9 65:2,11	representing	responses 8:1
	146:11 165:5	4:21	16:11 17:10
104:7,14 105:4,6			60:4
105:14 108:8,19	reporter's 165:1	represents 11:18 130:5 141:25	
109:1,13,25	reporters 34:7		responsible 31:8
110:2 112:10,18	38:22 39:7	143:6	31:16 41:19,21
112:22 113:6,10	reporting 2:6	request 6:21	154:9 155:18
113:12,16,20	4:15 25:11	16:8 17:10	rest 86:9 92:21
114:1,2,15,22	27:19 31:16	26:10 55:20	125:13
115:17,20,24	44:14 45:9	61:24 63:15	result 122:23
116:3,18,18,19	61:13 65:3	94:12 95:9	retained 41:9
116:21,23,25	75:17,23 76:5,12	96:10 111:11,13	review 10:4 18:6
117:24 118:9,13	76:16 77:3,5,10	requested 48:22	18:10 38:7 57:1
118:24 119:10	79:25 97:11	50:8,11 101:1	63:3 105:19,25
120:25 127:23	98:23 103:16	111:15 163:7	106:7,10,14,17
127:25 131:7	104:9 106:11	requests 16:10	106:20,25 107:4
133:13 134:9	109:23 110:14	17:4 93:3	108:7 119:16
135:22 138:12	122:9 144:5	researcher 29:23	152:8
140:5 142:8	154:9,12 155:18	29:25	reviewed 9:20
145:14 147:25	reports 3:12	researchers 29:1	10:24 16:1,15
148:4,6,9 150:23	37:5 38:16 41:1	29:11 30:7,12	18:2,4,18,23
151:5,22,24	47:9,10,19 49:25	31:24	19:8 122:2,21
154:14,21,23	52:1,11 68:24,25	reside 5:22	147:6 149:13
156:12,21,22	69:6,13 76:20,23	69:21	reviewing 17:9
157:5	77:4 79:19 80:9	residing 164:24	26:14 122:11
reported 1:22	82:11,16 89:1	respect 21:17	152:10
4:15 18:7,25	90:5 100:3	35:8 36:6 38:16	revisions 38:24
19:2,3 36:3,23	101:6,7,11	50:16 75:16	ribbon 159:8,13
49:9 63:17	102:15 103:13	79:18 115:10,23	160:12
68:22 78:8 84:7	103:16 106:11	141:24 142:12	right 6:4 7:20
84:19 86:21	111:22 113:22	144:5 147:21	8:12,14 9:4,5
117:21 119:10	115:23 116:4	149:1,16 150:7	10:3,23 11:11
128:2 133:14	124:13 133:10	156:17	14:23 17:9
147:24 148:10	136:22 155:8,14	responding	18:13 21:7,12
148:12	155:20 156:19	16:24	26:15,23 27:4,10
			35:16 40:1,4,13
			20.10 .0.1, 1,10

[right - sends]

40:21,24 48:23	rolling 78:20	screen 27:8	109:18,20 110:1
51:4 55:8 57:18	room 4:25 5:3	38:14 80:25	111:3,19 112:5
59:24 60:6	47:15 64:12	86:10 157:24	114:11,20 116:7
61:24 70:5,21	74:24 102:3,14	scroll 130:18,19	119:20 120:3,5
72:9,11 74:7	102:21	se 109:1,10,19	120:10,16,22
78:19,22 79:12	rooms 102:9	113:12 129:8	123:8 124:13,14
79:17 80:6,19	rpr 1:22 165:23	133:2	125:7,16,20
81:3,4,7,17 83:1	rule 7:6	seal 165:18	126:3,8,9,20,23
85:18 86:13	rules 6:5	search 102:1	127:18,20 128:8
88:22 89:12,16	S	108:4	128:12 130:22
89:18 93:14,22	s 3:9 4:1	searches 126:3	133:10,13
94:16,18,24	san 2:15	second 51:2	134:11,12,13,19
95:20 96:8,15	sara 1:7 2:24	100:23 122:10	134:20,21,24
97:18 99:3	51:4	125:6 147:11	135:3,15 136:2
100:22 108:9	sarah 23:4	152:3 159:4	136:13 140:5
109:8 110:11	saturday 78:2	section 81:12	141:14,16 152:4
114:13 115:4	saves 83:15	100:24	156:19 158:25
121:2,10,13,17	saw 146:15	sections 92:20	159:5,16,25
121:25 123:22	159:15	security 113:13	160:10,25
125:18 126:17	saying 5:14	see 6:16 11:14	seeing 94:5
128:10 129:8,9	22:17 55:12	11:16,17 25:19	109:1 124:24,24
129:11 130:2	64:5 88:17	27:10 35:16	152:10
131:1,9 132:8,11	says 35:20 81:7	38:1 40:21 51:6	seen 15:11
133:2,18 134:3	84:24 87:18	56:11 58:15	126:14 131:7
134:10 135:5,7	88:8 96:17	60:15 62:16	133:14
135:10 136:6,7	100:25 128:13	67:16 74:5	send 29:2 30:1
138:4 139:15,22	130:15 133:19	77:11,12 79:6	30:16 31:2,4
148:24 151:2,3,6	134:13 135:24	81:5,22 83:15,16	34:8 38:23
152:4 153:23	159:7	84:18,20 85:5,20	39:10 64:24
154:25 155:20	scan 16:3 17:19	86:7,9,17 87:5	65:5 68:17,20
156:5 157:2,9,15	scanned 16:5,21	87:15 88:15	69:13 75:4,8,12
159:16 162:20	109:3	89:13 90:3	79:8 86:13
162:22	schedule 34:10	92:18,24 93:9	116:9,17 117:5
rite 90:21 91:19	34:12,18	95:18 97:15,19	138:5 148:2,2,20
92:16	school 51:6	100:24 101:5,7	sending 59:22
river 2:20	89:11 146:21	101:13 103:10	60:1
role 17:21 61:8	149:2	105:16 108:8,18	sends 39:11
61:11		108:19 109:17	

[sent - speculation]

sent 13:8 31:6,22	shimabukuro	single 103:1	sooner 119:20
76:19	137:24	138:13	120:4,6,11,16,22
sentence 160:16	short 32:6	sit 6:16 141:1	sorry 11:8,19
separate 15:12	108:21	145:3	20:13 22:3 33:5
123:13	shorten 129:4	sitting 59:21	56:7 69:15 71:4
separately 53:18	shorthand 165:5	situations 82:3	73:5 87:9
85:13	165:12	six 15:19 37:2,3	102:22,23
series 15:19	shortly 156:3	sky 3:11 27:15	105:13 112:1
serve 13:17	shout 6:19	27:16,17,21,24	122:15 126:25
14:16 92:25	show 14:25 26:8	28:5,10,18,21	131:2 146:8,10
131:25 132:5	27:8 32:22	35:9 40:15	148:5
140:15,23 141:6	71:13 93:6	41:15,18 84:8	sort 84:9,11,12
142:14 143:22	104:14,16	89:3 100:1,4	84:15 87:21
144:1 146:25	121:17 152:3	105:4 106:11	88:2 90:17
153:6 162:5	showed 26:12	116:2,21 117:24	sorted 85:18
service 1:4 4:21	showing 121:25	118:9,13,24	sounds 12:11
23:9 41:12	130:20 158:9,23	119:10 145:14	18:13 22:4 32:9
service's 3:15,17	159:18 160:4,20	148:4,9 154:14	65:10 67:9
services 4:9	160:21	155:20 157:5	94:21 96:2
41:14 93:3	shows 53:15	slightly 113:24	114:25 119:5
set 16:20 17:3	128:12 130:16	small 50:9 52:15	source 144:13
34:19 72:14	136:2	smaller 63:25	speak 40:9 78:24
seven 37:2	sic 73:16	smart 101:25	speaking 5:2
shakes 8:4	sick 20:20 154:5	smoother 6:6	speaks 140:12
share 27:7 38:14	side 102:4,19	social 113:13	specific 9:7 23:2
86:10,14 96:14	129:20	somebody 25:10	25:7 26:11 92:1
sheet 11:1,4,7,12	signature 150:4	33:12 67:10	110:24 111:1
11:13,22 12:17	150:5 163:7	119:2 126:19	specifically 8:20
12:19,22,25 13:3	165:21	127:1 129:24	12:1 26:10
13:5,14,15,16	signed 122:21	133:25 137:2	44:24 45:14
14:24 15:4	152:13,16	142:10 162:15	112:12 148:1,3
17:22 26:4 52:8	signing 149:13	somebody's 84:3	158:11
56:25 63:22	similar 91:2 96:3	someone's	speculation
111:3 132:19	114:25,25 119:8	118:11	68:10 107:20
145:15 161:12	similarly 161:10	soon 12:7 14:2	118:3 120:19
sheets 15:23	simmons 1:22	77:11 97:22,24	140:19 143:11
26:1,7 85:21	2:7 4:15 7:23	156:19 157:2,3	146:6 151:10
108:3,6	165:5,22		
	I	I	1

[speed - supplemental]

speed 10:1 start 8:13 23:20 statewide 69:7 141:5 162:18 speedy 75:16 27:6 37:1,4 85:11,12,16 submitting spell 42:4 105:13 124:1,5,6 124:2 submitting spokane 65:12 started 9:10,19 stephanie 89:10 subscribed spreadsheet 9:25 19:4 28:9 stephanie 89:10 subscriber 27 11:14,21,25 41:3 43:9 69:9 43:24 95:23 110:12 125:3,9 127:9,10 73:1 79:21 stewart 50:23 111:10 128:19,23 102:24 124:15 stipulations 4:18 subscribers 132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	:22
spokane 65:12 125:11 stay 133:12 subscribed spreadsheet 9:25 19:4 28:9 stephanie 89:10 164:21 11:14,21,25 41:3 43:9 69:9 43:24 95:23 110:12 125:3,9 127:9,10 73:1 79:21 stewart 50:23 111:10 128:19,23 102:24 124:15 stipulations 4:18 subscribers 132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	:22
65:16 started 9:10,19 stephanie 89:10 164:21 spreadsheet 9:25 19:4 28:9 steps 21:15 subscriber 27 11:14,21,25 41:3 43:9 69:9 43:24 95:23 110:12 125:3,9 127:9,10 73:1 79:21 stewart 50:23 111:10 128:19,23 102:24 124:15 stipulations 4:18 subscribers 132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	
65:16 started 9:10,19 stephanie 89:10 164:21 spreadsheet 9:25 19:4 28:9 steps 21:15 subscriber 27 11:14,21,25 41:3 43:9 69:9 43:24 95:23 110:12 125:3,9 127:9,10 73:1 79:21 stewart 50:23 111:10 128:19,23 102:24 124:15 stipulations 4:18 subscribers 132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	
11:14,21,25 41:3 43:9 69:9 43:24 95:23 110:12 125:3,9 127:9,10 73:1 79:21 stewart 50:23 111:10 128:19,23 102:24 124:15 stipulations 4:18 subscribers 132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	
125:3,9 127:9,10 73:1 79:21 stewart 50:23 111:10 128:19,23 102:24 124:15 stipulations 4:18 subscribers 132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	7
128:19,23 102:24 124:15 stipulations 4:18 subscribers 132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	7
132:17 135:20 138:19 stop 38:14 86:10 27:20,25 31:3 137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	7
137:5,15 139:1,3 starting 42:6 96:13 31:9 93:15 94	7
	, /
440.0440.400	:3
140:3 142:1,22 starts 46:19 stories 117:6 94:5 96:24	
152:24 state 2:8 4:17 story 117:2,10 111:8,16,23	
spreadsheets 5:17 13:22,25 148:20,21 157:4	
138:15,24 139:1	
139:8 144:7,8 25:2,11,14 29:7 strike 15:4 52:10 28:5 41:11,14	
stage 61:22 29:8,10,15 30:8 72:13 92:8 substitute 20:	17
stamp 14:3 30:9,14 34:20 106:11 119:14 28:13	
55:12,12 57:12 38:8,18,18 42:23 156:7 suing 109:11	
57:16,21,25,25 43:25 44:11,16 strikes 7:2 suite 2:20	
58:2 131:6,13,13 45:13,20 46:8,11 student 113:13 summaries 30	:5
131:15,17 134:6 46:19,23 47:3 style 3:12 8:17 111:11,14	
134:16 147:4 48:9 51:20 62:2 8:21 9:5,6,18,20 summarize	
159:6,7,11 160:1 71:20 72:3 10:3 15:22 41:1 112:22	
160:13,17,18 84:12 103:17 52:2 79:19 80:9 summary 11:	.8
161:5,10 162:1	
stamped 55:16 106:19 112:19 94:4 113:23 38:17 44:15	
56:15 142:8 114:3 115:1 116:4 45:5 73:13 75	:8
151:15 119:9,17 122:24 sub 154:24,25 75:12 101:12	
stamps 143:19 138:14 146:22 submission 111:7,9	
144:20 161:6 154:9,12,19 140:15 summons 92:2	20
stand 63:24 64:1 155:19 156:13 submit 137:22 93:8	
64:3,5 156:13 164:2 137:23 sunday 78:3	
standing 54:13 165:2,6,24 submits 143:25 supervisor 13	10
54:18 58:14 statements 7:21 submitted 13:16 23:23	
60:14 states 1:1 35:16 46:13 99:8 supplemental	
standpoint 7:19 37:22 123:23 128:23 131:18 3:16 152:5	
75:23 76:5,12	

[support - thanksgiving]

support 3:14,17	99:3 104:2,22	136:20	96:20 101:9,19
112:7,8	105:7 107:16	talked 21:24	109:16,19 114:6
supposed 39:10	108:2 112:16	22:5,10 23:6,15	114:21 118:15
supreme 46:4,6	114:15 115:15	23:24 61:19,20	122:5 124:12
sure 6:10 9:17	120:11 142:21	67:22 69:5	125:24 132:25
10:14 12:23	143:8 146:2,25	124:5 136:3,16	telling 82:2
13:12,18 14:14	147:1 150:22	143:18,21,24	154:18
16:7,17 21:24	151:15	146:17 161:24	tells 85:20
25:4 29:24 30:6	t	talking 14:23	ten 39:21 78:13
33:2 34:10	t 3:2,9 42:5	22:21 23:18	tens 90:14
36:20,24 45:16	89:15	25:16 60:6 64:7	term 107:7
45:25 49:7,24	take 6:17,23	82:9 86:22	111:1
51:18 53:12	10:22 17:21	87:19 96:16	terms 110:25
54:13,16 57:11	32:7 37:9 39:16	98:22 100:9	testified 5:9
59:19 76:6 82:7	39:20 43:25	114:10 125:10	144:12 150:12
84:18 85:8 94:2	48:14 67:16	142:6 153:6	testify 140:1,9
97:23 103:23	71:13 78:12	talks 97:16	165:9
106:21 107:24	80:14,20 84:4	target 97:2	testimony 59:9
114:17 121:7	90:23,23 93:12	tasked 116:2	59:18 61:5
129:22 131:20	94:14 95:6	151:1	68:10,13 142:3
131:21 135:23	96:24 112:21	tax 93:25	143:1 144:12
136:14 137:1	121:2,6 126:10	technologies	149:6 150:19
139:19,20 142:5	144:7 153:16	55:1 105:20,25	158:12,16,20
144:18 148:19	taken 2:4 4:7	131:24 132:4	162:11
151:13 155:15	36:18 39:25	140:15 146:24	text 81:21,23,24
157:14 159:15	78:18 95:16	telephone 2:16	82:12,22,24
161:20	102:8 107:13	2:21	126:9 135:22
swear 5:5	121:12 137:4,9	tell 5:8 10:15	texting 60:3
sworn 5:8	153:22 164:8	20:16 22:19	thank 6:20 7:14
149:23 164:5,21	165:11	24:6 27:13	51:8 81:2 141:9
165:9	takes 32:22 33:8	35:10,13 36:24	144:21 157:15
system 14:21	34:6 36:21	40:24 46:7	157:17 158:7
33:15,18,21 36:8	talk 24:1 29:4	53:23 63:12	160:20 161:14
44:20 45:1,2	40:6 54:19 67:7	69:4,6 71:19	162:20,24
47:8 53:5 59:3	94:18 100:16	73:24 75:14,20	thanks 125:8
59:13,16 61:4,10	112:16 121:19	75:24 76:3 77:3	thanksgiving
70:1,5 80:2 83:2 83:13 98:4,11	125:3 130:5	82:16,23 83:24 85:23 86:3	78:6
05.15 70.4,11		03.23 00.3	

[thereof - transferred]

thereof 164:11	three 2:15 28:11	161:5,6,10 163:2	top 19:11 34:5
thing 10:23 50:7	38:25 49:11,23	165:12	57:12 92:4
63:15 95:11	86:20	timeliness 25:18	112:10 159:6,8
129:18	throw 85:4	32:14 41:8	159:11 160:1,11
things 8:19 18:9	time 4:5 6:25,25	timely 26:20	160:16 161:5
22:9 40:14	7:15 12:5,20	75:22 76:5,11,16	track 11:14,15
43:20 45:6 93:7	14:3,4 15:2	77:5 156:11,16	12:24 13:2
94:8 113:14	22:22 23:1 25:9	157:9,13	15:10 17:15
140:25 153:4	26:6 28:14 31:1	times 21:25	32:13,17,25 72:1
think 13:7 14:13	32:22 33:7 39:9	22:11 23:5,7,9	92:6 114:2,15
15:1 16:9,12	39:23 40:2	36:16 49:14,15	125:14 127:17
19:10,11 22:8	48:24 49:13	49:22 55:19	128:1 161:9,11
24:18,23 25:5,7	54:14,15 57:25	72:21 102:12	tracked 21:20
26:22 32:11	58:11 60:11	109:5,5,9 112:15	71:24 72:2
34:1 42:5,5 54:7	62:11,22 71:10	113:8 117:9,11	tracking 11:1,4
56:19 62:23	71:18 72:25	timing 25:1,13	11:7,12,13,22
64:10 65:16	75:14,20 76:1,3	26:2,8 32:18	12:6,17,19,22,25
66:22 69:5,19	76:8,10 77:2,8	49:3 153:13	13:5,14,15,15
70:9,24 79:10	78:16,20 82:8	title 13:12 16:25	14:24 15:4,10,23
81:15 88:16	84:16 86:4	today 4:24 7:19	17:16,22 21:10
90:8 97:18	87:14 89:19	8:2,16 10:25	21:17 22:6
99:11 101:9	93:16 98:3,6	17:13 18:11	24:22 26:1,3,4,7
102:5 106:21	101:7 102:7	19:9,17,18 20:7	124:1 125:11
116:22 120:9	108:22 112:5,22	26:25 29:14	137:18 142:15
125:19 127:2	117:12,23 118:8	61:14 82:14	145:15 148:6
129:3,18 130:20	118:11 121:11	84:2 122:3,19	161:12
130:23 131:21	121:14 124:18	137:18 141:1,2,3	tracks 33:6
133:1 145:23	131:6,12,15,17	153:7	trained 45:12,17
146:19 148:3	133:5,16 136:18	today's 4:4 10:5	96:21
153:17 156:20	138:7,16,24	16:1 152:8	training 28:8,12
160:25	139:2,6 142:7	told 21:12 23:25	41:7 44:19 97:7
thinking 54:9	144:20 145:25	24:16 58:2	113:21 119:23
117:1	146:12,14 147:3	75:19 76:10,13	transcribe 8:7
thoroughly 19:7	147:22 148:7	80:5,6 119:18	transcript
122:25	151:14 153:20	133:1 145:2	165:14
thought 43:14	153:24 157:16	148:7	transferred
145:5	159:6,7,11 160:1	tomorrow	146:24
	160:13,17,18	139:18	
	I	I	

[transferring - vague]

transferring	type 11:15 42:6	129:2 135:18	ups 45:10 161:16
147:2	56:23 85:22	154:13 156:5	usdc 28:23 114:1
transfers 112:24	types 45:6,23	157:7	118:17,19
transitioning	68:1 111:12	understanding	use 8:3 11:9,9
53:4	typewriting	12:21,23 13:19	12:22 13:20
travel 124:20	165:13	13:24 16:14	15:10,14,16,23
tree 90:21 91:19	typical 37:7 49:2	28:2,4 32:8	15:24 21:13
92:16	typically 90:14	35:18 38:22	29:5,6 52:5 71:6
true 150:2	90:15	46:21 48:10,11	94:4 102:19,21
152:17,18,21	typo 118:6	48:12 52:14	107:10 110:24
164:14 165:14	typos 118:25	54:2,9 55:10	111:1 113:22
truth 5:8,9,9	119:1	56:20 69:3	125:19 134:1,1,4
165:10,10,10	u	72:15 88:16	135:3 145:11
truthful 122:13	u 42:5	97:25 98:16	149:15,23 155:2
try 51:17 94:1	u.s. 119:6 159:13	106:7,8,24 107:3	161:13
101:8 161:1	160:17	120:4,14 122:6	user 83:18
trying 25:8	uh 8:5	123:18 132:3	usually 11:3
62:23 87:17	uhs 8:6	136:4 143:3	30:4,6 37:2,8,10
135:18	ultimately 13:21	150:15 152:7	49:6,10 85:2
tuesday 2:8 38:5	14:8 47:3	154:3 156:8,23	90:16 93:8 94:1
turn 54:19	122:21	understood 6:12	94:14 100:12
twice 116:15	um 71:2 128:9	53:23 54:12	102:4 129:19
twin 64:18	128:14	150:9 152:12	utmost 103:13
two 10:8 28:11	understand 6:8	159:17	v
34:17 49:11,22	9:3 13:18 17:1	unfiled 98:24	v 1:6
86:20 89:8	17:20 20:19	115:18	vacation 20:20
96:17 100:25	34:18 41:6	united 1:1 35:16	154:5
102:5 147:15	42:20 44:10	37:21 150:1	vague 29:17
155:10	45:9,14,19 46:7	universe 26:24	30:20 31:11
tyler 13:17	46:10,17 47:18	update 79:24	44:2,21 47:23
105:19,20,25	73:8,15,25 74:1	updated 9:12	48:18 49:19
131:24 132:4	74:7 82:25	79:22 139:17	51:14 54:5,22
140:15,23 141:6	87:17 98:10,12	updates 13:14	56:5 57:4 58:6
142:13,16	98:18 99:7	upload 94:2	58:22 59:8 73:7
143:22 144:1	103:23 104:20	111:21	73:19 77:15
146:24 162:4	109:5 115:5,13	uploaded 112:3	98:13 104:4,10
tyler's 14:16 153:5	122:20 125:4,22	uploads 100:9	104:23 105:8

[vague - words]

107:6,18 108:14	videographer	117:2 128:24	weekend 36:21
115:8 118:1	2:24 4:3 5:4	138:21 139:8	38:2,12 78:1
120:12,17	39:23 40:1	150:23	weekends 36:22
132:13 136:24	78:16,19 121:10	wanted 22:8	37:19 38:9
140:11,17 142:3	121:13 153:20	47:14,16 50:3,5	weekly 26:5 29:2
142:24 143:10	153:23 162:22	50:13 55:2 56:2	weeks 28:11
146:3 149:5	162:25	56:18 57:1	34:17
150:18 156:14	videotaped 1:13	58:18 60:20	went 8:17,18
157:10 162:11	2:1,3 4:7,12,13	63:5 96:5	12:7,8,12,16
valenti 1:13 2:1	8:2	110:17 121:9	21:15 28:15
2:4 3:4,14,17	view 156:2,10	wanting 120:25	42:2 47:4 49:10
4:7,21 5:7,14,16	visit 34:16,25	washington 62:8	63:9 65:11
5:17,19 20:4	35:4 62:7,8	63:12 65:2,11	67:11 68:4
40:4 48:6 67:15	63:14 75:9	70:19 74:19	70:11,12 76:6
78:14,22 129:4	visited 68:3	75:3,8,21	144:9 151:15
139:14 149:9	vs 4:9 23:4 89:15	way 13:21 14:8	162:6
157:23 158:3,8	89:17 90:21	20:3 51:10,24	west 2:20
161:17 163:1	\mathbf{w}	68:14 76:1 87:9	william 2:25 5:3
164:5,19	wait 54:18 82:12	104:1 105:3	witness 5:5,8
various 34:20	82:21,24 102:8	106:9 135:17	19:25 29:20
39:8 129:11	102:13	143:15 146:20	31:14,21 39:19
vary 37:11	wake 147:19	149:8 154:22	44:6,23 48:21
verbal 8:1	walk 91:10	we've 67:22,22	49:22 54:7 57:8
verbatim 165:15	walked 100:7	115:24 139:2	58:25 73:22
verification	walmart 97:2	152:21 161:6	99:17 105:12
164:1	want 58:20 59:5	web 101:17	107:9 108:17
verified 153:5,13	59:12 60:8,18,24	website 53:14	118:5 120:14,20
verify 28:3	61:8 62:16,18	93:13 116:9	130:23 137:1
veritext 2:6 4:16	68:12 73:5 82:3	124:11	140:20 142:5
version 9:6,7	82:18,21 83:4	week 22:5 34:16	144:12 146:7,12
125:16 139:17	87:21,21 88:9,10	62:7,11 65:3	156:18 157:13
versus 123:6	89:3,23 94:2,3	72:25 75:3,15	157:17 164:7
146:14	94:22 95:23	76:11 116:15,15	165:8,18
veterans 78:6	96:24 100:5	138:17	word 54:5 146:4
video 2:6 4:16	103:20,25 104:6	week's 62:12	149:15,22,22
163:1	110:13 114:20	weekday 72:19	wording 91:25
videoconference	116:8,17,19,23	77:12,22	words 59:16
2:5 4:13			149:9,12
	I	I	I

[work - zoom]

work 11:3 14:12	35:8 38:21 39:4
34:7 36:25 37:1	39:5,7 106:16
37:2,10,19 42:7	wyoming's
46:9 58:12	32:17 33:7,17
60:12 66:1	X
77:13,20,23,25	x 3:1,2,9 144:8
78:5,14 102:24	
117:13 119:15	y
124:17 155:16	y 144:8
workday 154:15	yeah 46:10 49:2
worked 8:18	54:16 60:1
47:1 54:3	66:19 73:24
workflow 99:11	83:6 92:12,14
working 9:25	103:25 111:4
21:14 43:9	112:12 130:7
45:11 50:2	140:4 160:12
79:21 146:22	162:24
149:2 155:1	year 88:1,7
works 13:13	years 5:25,25
39:21 108:24	43:2
world 82:15 96:5	yellow 136:15
worries 62:24	yellowstone 34:1
worrying 93:2	34:13
worth 62:12	yep 19:13 51:9
wow 145:4	yesterday 84:6
write 30:17	86:14 90:9
111:6,9 116:8	yesterday's 84:4
117:2,6,10,16,17	86:11
147:22 148:20	\mathbf{z}
148:21	z 144:8
writing 119:22	zone 147:19
written 117:20	zoom 4:13 16:18
121:23 149:9	Z00III 7.13 10.10
wrong 118:9	
wrongful 97:3	
wyoming 28:19	
28:22,23 29:1	
31:16 34:22,23	
,	

Idaho Rules of Civil
Procedure

Rule

- (e) Review by the Witness; Changes.
- (1) Unless waived by the deponent and the parties, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which (A) to review the transcript or recording; and (B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them. (2) Changes indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30 (f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period. (3) Witness Failure to Sign. (A) In General, If the deposition is not signed by the witness within the 30-day period, the officer must sign it and state on the record the fact of the waiver of signature, or of the illness or absence

of the witness or the fact of the refusal to sign the deposition together with any reason given for not signing.

(B) Use of Unsigned Deposition. The deposition may be used as if it were signed, unless pursuant to Rule 32

(d) (4) the court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES

ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE STATE RULES

OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

Case 1:21-cv-00305-DCN Document 60-8 Filed 12/15/22 Page 79 of 79

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Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

Exhibit H

ER-1877

Home • Dataharvest

Information on Odyssey Portal Data Harvesting

Updated May 3, 2022

We are pleased to report that as of April 21, 2022, 100% of potentially affected client Odyssey Portals have been remediated.

In the coming months, we will publish additional releases of Odyssey Portal that further "harden" the application against undesired harvesting activity. In accordance with industry best practices, we consistently encourage our clients to stay up to date with the latest releases of our software to take advantage of both stability and security enhancements.

We will post news of the next few Portal releases for clients on the Tyler Community site in addition to our usual client communication channels for software update information. Clients will also receive notification from their Client Success teams when these updates are available for independent or assisted installation.

Previous Updates

April 19, 2022

As of April 2, 2022, 99% of potentially affected client Odyssey Portals have been remediated. The remediation for each client is unique and based on individual configurations and preferences. We are optimistic that we will reach 100% remediation soon.

We continue to work cooperatively with judyrecords.com on behalf of our clients to best understand what nonpublic data, if any, may have been made available via the judyrecords.com site. Tyler has developed a process to facilitate our clients' investigations and we continue to make resources available to streamline such process for all stakeholders.

In addition, Tyler is coordinating with multiple third-party security firms, including Mandiant, on this active investigation. While a complete forensic analysis is still underway, we are pleased to have nearly all potentially affected Odyssey Portal users remediated and live.

March 21, 2022

Remediation efforts and the security of our clients' data remain Tyler's top priorities. Our cross-functional internal team along with our third-party security firms have been working continuously on behalf of our clients since this matter was first identified. We are committed to working in a forensically sound, responsible manner.

As of March 21, 2022, over 80% of potentially affected client Odyssey Portals have been remediated and are back online. Our support team continues to work with remaining clients on remediation based on their individual configurations and scheduling preferences.

Tyler is working with and on behalf of our clients to best understand what nonpublic data may have been made available through a judyrecords.com search, if any, and what data may have actually been viewed via the judyrecords.com site, if any. We understand from

Contents

- Previous Updates
- Steps Being Taken
- Available Facts
- Support for Tyler Clients
- FAQs

Contact Information

MEDIA CONTACT

TYLER TECHNOLOGIES MEDIA

TEAM

Media.team@tylertech.com Media Room

judyrecords.com that they have the ability to both identify what data was harvested and what was accessed while on their site and, thus, judyrecords.com's continued cooperation is extremely important.

For those clients where judyrecords.com has provided the full data, Tyler has worked to help our clients fully assess the harvested information and identify what may have been viewed or accessed while on this third-party site. Tyler will continue acting as an intermediary between these clients and judyrecords.com to ensure that all nonpublic information has been removed from this third-party site. We look forward to judyrecords.com's continued cooperation in this effort.

March 8, 2022

On Feb. 24, 2022, Tyler Technologies was notified by the State Bar of California that nonpublic case record data was posted to judyrecords.com. Judyrecords.com is not associated with the State Bar of California or Tyler. Tyler immediately launched an extensive investigation.

Based on our research to date, it appears that judyrecords.com regularly conducts data harvesting to make <u>public</u> records available through an online search tool. During judyrecord.com's harvesting activity, it appears that certain <u>public</u> and <u>nonpublic</u> case records were accessed by judyrecords.com via the State Bar of California's Odyssey Portal and made available for search on the judyrecords.com site. Tyler confirmed this activity did not involve access to the State Bar's Odyssey case management system and was contained to its public-facing Odyssey Portal.

On Feb. 28, 2022, Tyler learned that judyrecords.com may have performed data harvesting activity on the Odyssey Portals of other Tyler clients, and may have made certain nonpublic data of other Tyler clients available for search online as well. Tyler quickly contacted clients that have an installation of Odyssey Portal identified as potentially affected and provided recommendations for containment, including the option of taking their portal offline and similar mitigation steps.

The data harvesting activity surfaced a vulnerability in the Odyssey Portal that is being addressed through intensive efforts by the Tyler team in coordination with our clients. Clients use the Odyssey Portal to provide access to public case records, but also may authorize and grant access to approved third parties to access nonpublic case records. Tyler is working with clients to make sure that only authorized parties can access nonpublic case records.

On March 4, 2022, judyrecords.com confirmed to Tyler that they had performed data harvesting on the Odyssey Portals of other Tyler clients and had information that could assist in identifying the exposed nonpublic records. Please see the steps below for more information.

Steps Being Taken

- 1. The issue is of utmost concern to Tyler. Tyler's first priority is working with our clients to (1) ensure the security of their data, and (2) remediate the issue as soon as possible so our clients can continue to use Odyssey Portal to serve their constituents.
- 2. We are gathering as much information as possible to determine what type of data was accessed and whose nonpublic data may have been made available through a judyrecords.com search. We are committed to sharing our findings with our clients and taking appropriate actions to ensure security of client data.
- 3. Tyler and judyrecords.com are currently coordinating with each other to identify other potentially impacted Tyler clients. The operator of judyrecords.com has indicated a willingness to share detailed information that will assist Tyler in determining which client data was involved. Tyler acknowledges and appreciates that judyrecords.com has taken steps to contain further disclosure of nonpublic information. We acknowledge judyrecords.com takes the position that the accessing and disclosure of nonpublic information by judyrecords.com was inadvertent.

4. Tyler has been receiving and will continue to work to receive information from judyrecords.com and from Tyler's clients in a forensically sound manner to assist with the investigation. Tyler has engaged our outside security team, Mandiant, to assist with this work. Tyler looks forward to continuing to work cooperatively with judyrecords.com and with our potentially impacted clients to ensure a full investigation is completed and all nonpublic information remains confidential.

Available Facts

- On Feb. 24, 2022, Tyler learned that the State Bar of California's nonpublic case record data was posted to judyrecords.com.
- On Feb. 28, 2022, Tyler learned that judyrecords.com may have also performed data harvesting activity on the Odyssey Portals of other Tyler clients and had potentially posted nonpublic data of other Tyler clients online as well. This activity was confirmed by judyrecords.com on March 4, 2022.
- Tyler quickly notified potentially affected Odyssey Portal clients and provided recommendations for containment, including the option of taking their public-facing Odyssey Portal offline.
- Judyrecords.com's data harvesting activity involved only certain public-facing Odyssey Portal installations. It did not involve nonpublic-facing Odyssey Portal installations or Odyssey case management systems.
- Between March 2 and March 18, 2022, Tyler held eight webinars for Odyssey Portal clients to explain what we know about the judyrecords.com activity, the scope of its impact, and the steps clients can take to remediate and/or mitigate a data harvesting risk on their Odyssey Portal deployment.

Support for Tyler Clients

- The Tyler team invited all potentially affected clients to multiple online webinars to explain the issue and direct them to resources for more information.
- Tyler's support team has posted recommended actions and instructions on Tyler's community platform, and these are being updated regularly.
- Tyler has dedicated additional staff and resources to research and mitigate this matter.
- Tyler has engaged Mandiant, a third-party security forensic company, to support Tyler's investigation of this issue.

FAQs

Why were nonpublic records accessible in this way?

How many Odyssey Portal locations were involved with data harvesting and what kind of data was harvested?

Was my nonpublic information made publicly available?

How soon can each Odyssey Portal be remediated?

Judyrecords.com has asked Tyler to state its belief as to whether or not the nonpublic records were harvested intentionally. What is Tyler's response?

Tyler has previously acknowledged that judyrecords.com's position is that its accessing and disclosure of nonpublic information was inadvertent. In addition, Tyler has also stated that it is taking a deliberate, systematic approach to the research and forensic activities it has mobilized. While we understand that involved parties desire a quick resolution, our focus is on conducting a full and responsible forensic analysis, which takes time. Consistent with standard forensic protocols,

Case 1:21-cv-00305-DCN Document 60-11 Filed 12/15/22 Page 5 of 5

it is not prudent to draw conclusions while this analysis is ongoing. We continue to appreciate judyrecords.com's cooperation with Tyler and look forward to continued collaboration.

How many Tyler clients use Odyssey Portal?

What does it mean if a jurisdiction is listed on judyrecords.com?

Exhibit I

ER-1882

NEWS • Investigative

State Bar notifies 1,300 individuals identified in massive data breach

State Bar Executive Director Leah Wilson says contacting those affected is the 'right thing to do'

By SCOTT SCHWEBKE | sschwebke@scng.com | Orange County Register PUBLISHED: May 6, 2022 at 7:50 p.m. | UPDATED: May 9, 2022 at 1:02 p.m.

The State Bar of California has begun notifying thousands of individuals whose names appeared in 322,525 confidential attorney discipline records published online in a massive data breach discovered in February,

Specifically, the State Bar said Friday, May 6, it will contact through email or postal mail 1,300 complainants, witnesses or respondents whose names appeared in the 1,034 confidential records that showed evidence of a page view. Those named in unviewed records with emails on file with the State Bar also will be contacted.

"We are taking these steps because we believe it's the right thing to do," State Bar Executive Director Leah Wilson said in a statement. "The State Bar is committed to transparency, and maintaining the public's trust in our agency is paramount. That said, we had to balance our commitment to being transparent with considerations of costs, logistics, and fiscal prudence. We believe we have struck the right balance."

The documents, published by public records aggregator Judyrecords, remained online from Oct. 15, 2021, to Feb 26, 2022.

The breach, first reported by the Southern California News Group, was not a malicious hack, but rather a security vulnerability in the State Bar's Odyssey Portal operated by Texas-based Tyler Technologies. As a result, the confidential records were unintentionally swept up and published by Judyrecords.

Access to the State Bar Court's public records has been restored and the Odyssey Portal vulnerability has been corrected.

The search function on the Judyrecords website remained disabled Friday. The website's administrator said in a note to users the Tyler Technologies portal glitch allowed access to court cases for various jurisdictions in California, Texas, Georgia and Kansas.

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Scott Schwebke | Investigative Reporter

Scott Schwebke is an investigative reporter for the Orange County Register and the Southern California News Group. A native of Fort Lauderdale, Fla., he was previously a breaking news and multimedia reporter for the Ogden, Utah, Standard-Examiner. Scott has also worked at newspapers in Utah, Colorado, North Carolina and Virginia covering everything from methamphetamine trafficking cops to hurricanes. He has also accompanied police on undercover drug buys and also provided an award winning, eyewitness account of the execution of a North Carolina death row inmate. Scott was part of the OC Register's investigative team that in 2017 produced the year-long, award winning Rehab Riviera series, examining problems in Southern California's drug rehabilitation industry. He also teamed up with reporter Joe Nelson in 2019 on Bad Apples, an award winning investigation that exposed years of sex abuse cover up in the Redlands Unified School District. Having spent two years living in England including Liverpool, he is an avid Beatles fan and memorabilia collector.

sschwebke@scng.com



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By The Penny Hoarder



Exhibit J

Deposition of 30(b)(6) Jennifer Dvorak Courthouse News Service v. Omundson November 7, 2022



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1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

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30(b)(6) Jennifer Dvorak

Page 1		Page 3
IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO	1	30(b)(6) DEPOSITION OF JENNIFER DVORAK
	2 3	EVANINATION INDEV
COURTHOUSE NEWS SERVICE,)	4	EXAMINATION INDEX EXAMINATION BY PAGE
	5	
Plaintiff,)	6	Mr. Fetterly
) v.) No. 1:21-CV-00305-REP	7	Mr. Fetterly
)	8	Ms. Duke
SARA OMUNDSON, in her official) capacity as Administrative)	9	WS. Duke 151
Director of Idaho Courts,)		EVI JIDIT INDEV
)	10	EXHIBIT INDEX EXHIBITS FOR IDENTIFICATION PAGE
Defendant.)	12	
	13	1 Notice of Deposition
30(b)(6) DEPOSITION UPON ORAL EXAMINATION	14	2 ISC Organizational Chart
OF IDAHO COURTS	15	3 Employee List
	16	
REPRESENTED BY JENNIFER DVORAK	17	5 Hansen/Marx Email String - 5/18/22 5 6 Dvorak Email String - 6/30/22 5
	18	Howland Email String - 7/6/22 5
Taken at Boise, Idaho	19	8 Fisher Email w/ Tyler Slide Deck - 7/14/22 5
(Conducted via Videoconference.)	20	9 Fisher Email String - 8/8/22 5
	21	10 Dvorak Email String - 8/19/22 5
	22	11 Dvorak Risk Memorandum - 8/18/22*CONFIDENTIAL* 5
	23	12 Fisher Email String - 8/24/22
DATE TAKEN: November 7, 2022	24	13 iCourt Project Overview & FAQs 5
REPORTED BY: Nicole A. Bulldis, RPR AZ No. 50955 CA No. 14441 WA No. 3384	25	14 Tyler Agreement - 8/28/13 5
		14 Tyler Agreement
Page 2		Page 4
1 APPEARANCES	1	30(b)(6) DEPOSITION OF JENNIFER DVORAK
2	2	
FOR PLAINTIFF: (via Zoom) Jonathan G. Fetterly	3	EXHIBIT INDEX (Cont'd)
Katherine A. Keating	4	EXHIBITS FOR IDENTIFICATION PAGE
5 BRYAN CAVE LEIGHTON PAISNER LLP	5	15 Tyler Electronic Filing Agreement - 5/27/21 5
3 Embarcadero Center, 7th Floor San Francisco, CA 94111	6	16 iCourt File & Serve: Electronic Filing Overview 5
(415) 675-3400	7	17 iCourt Odyssey File & Serve Log-in Portal 5
7 jon.fetterly@bclplaw.com	8	18 iCourt Odyssey File & Serve Filer Dashboard 5
katherine.keating@bclplaw.com	9	19 ISC Terms and Conditions for Cloud-Based Services 5
9 FOR DEFENDANT:	10	
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14 mem@dukeevett.com 15 16 ALSO PRESENT: 17 (via Zoom) BILL GIRDNER, CNS 18 SARA OMUNDSON, Idaho Courts 19000	18 19	
 14 mem@dukeevett.com 15 16 ALSO PRESENT: 17 (via Zoom) BILL GIRDNER, CNS 18 SARA OMUNDSON, Idaho Courts 	18 19 20	
14 mem@dukeevett.com 15 16 ALSO PRESENT: 17 (via Zoom) BILL GIRDNER, CNS 18 SARA OMUNDSON, Idaho Courts 19000 20 21 22	18 19 20 21	
14 mem@dukeevett.com 15 16 ALSO PRESENT: 17 (via Zoom) BILL GIRDNER, CNS 18 SARA OMUNDSON, Idaho Courts 19000 20 21	18 19 20 21 22	

1 (Pages 1 to 4)

2.4

Courthouse News Service v. Omundson

30(b)(6) Jennifer Dvorak

Page 7

Page 5 REPORTED REMOTELY FROM MARICOPA COUNTY, ARIZONA Monday, November 7, 2022; 12:04 p.m. --000--(Exh bit Nos. 1 through 19 marked.) witness herein, having been JENNIFER DVORAK, first duly sworn on oath, was examined and testified as follows: EXAMINATION BY MR. FETTERLY Q. Okay. Can you please state and spell your name for the record, please? A. Jennifer, J-e-n-n-i-f-e-r. Dvorak, D, as in "David" -v, as in "Victor" -o-r-a-k. Q. Thank you. Ms. Dvorak, my name is John Fetterly. I am an attorney with the law firm Bryan Cave Leighton Paisner. I represent Courthouse News Service in the case Courthouse New Service versus Sara Omundson in her official capacity as Administrator of Idaho Courts. We've noticed the deposition here today pursuant to our premarked Exhibit No. 1, which is the 2.5 notice of deposition, and this is a deposition calling

the lawsuit and specifically with respect to the topics or categories that we've just identified on the deposition notice. You've been produced as a witness to speak on behalf of the defendant so your knowledge is not necessarily limited to your personal knowledge, but rather, you know, your ability to speak on behalf of the defendant based on both personal knowledge and anything else you have done to educate yourself or prepare for today, and I'll ask you some questions about that momentarily.

As we go forward, I am entitled to your -- you know, answers to your questions unless your counsel instructs you not to answer. Assuming your counsel does not instruct you to not answer, you know, I'll await your responses. I'll do my best to wait for you to respond in full before I ask my next question. I'll ask that you please allow me to get my question out before you attempt to answer.

It's important that we not speak over each other today. There's a court reporter who is with us and she's recording everything we say, questions and answers, objections by counsel, and anything else that may be said. We want to have a clear transcript in the end, so it's important that we not speak over each other.

Page 6

for a 30(b)(6) witness to testify on one or more topics that are identified in the notice. Bear with me here. I'll put that up on the screen.

I'm now showing you that document. You may have a copy of it in front of you.

A. Yes.

2.1

Q. Have you seen this document before?

A. Yes. I have.

Q. And is it your understanding that you have been produced today to testify with respect to one or more of the categories identified in the exhibit to this notice?

A. Yes.

Q. Can you identify those categories for me?

A. Numbers 9, 15, 16, 17, and 18.

Q. And are you qualified to speak on behalf of the defendant as to these topics that you've just identified?

A. I believe so, yes.

Q. Okay. Before I start asking you any questions about those topics, first, I just want to go over a few basic things. I trust your counsel may have already gone over some of this with you, but I just want to make sure that we're on the same page.

We'll be asking you questions today concerning

Page 8

In that regard, I'd also ask that you provide verbal responses to my questions. Nodding your head, hand gestures, things of the sort, don't come across in a written transcript. And we're not videoing this deposition today, so, you know, please try to provide auditory responses. I'll do my best to prompt you if necessary along the way.

It's also important that we speak slowly.

That's advice I give to myself as much as I give to you, so give the court reporter the chance to record everything accurately.

It's also important that you understand my questions. I will do my best to ask clear questions that you understand. If you do not understand my question, please let me know. If you need me to rephrase, if you need me to clarify, you're entitled to seek clarification along the way, so please do so. If you do not, we will assume that you understood the question and you provided your best answer in response to the question.

Again, because we're not limited to just your personal knowledge, I may be asking you questions about, you know, the court and specifically the administrative office, you know, matters that concern the topics identified in the deposition notice. If, for some

2 (Pages 5 to 8)

Page 9

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Courthouse News Service v. Omundson

30(b)(6) Jennifer Dvorak

Page 11

Page 12

reason, you're unable to provide an answer because you don't know, I might -- we may need to adjourn and give you the opportunity to find out. But I just point this out now because, again, there's a distinction between you being produced as a 30(b)(6) witness versus a witness in your individual capacity. One thing I'm not entitled to is privileged

information. So any conversations you've had with counsel, I'm not entitled to that. I'll do my best not to ask those questions. I'm sure your counsel will let me know if I cross that line and fair enough.

So those are some of the basic ground rules that govern today. Do you have any questions about this proceeding before we begin?

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- Q. Okay. With respect to the topics that you identified on the notice, what, if anything, did you do to prepare for today's deposition?
- A. I did meet with my legal counsel. I reviewed my past emails with Tyler Technologies, and I reviewed some of the information that I received from them regarding their press review queue too.
- Q. A number of emails have been produced in this lawsuit that we have identified as premarked exhibits. We'll talk about those in due course.

preparation for today's deposition?

- A. No, not in particular.
- Q. Okay. Have you met with Tyler Technologies at any point since you were asked to get involved in this in June of 2022?
- A. Yes. I mean, in the course of -- of them being a major vendor of the Courts, I've met with them about many topics.
 - Q. Okay. Bear with me.

(Pause in the proceedings.)

Q. (By Mr. Fetterly) I'm pulling up back to Exhibit 1 and ask you to reference that document, and specifically the categories of testimony you've been asked to address today.

Looking at Number 9, the category is: "The factual basis for the statement that Tyler Technologies' press review queue presents potential cybersecurity risks as referenced in defendant's response to CNS's Interrogatory No. 1."

I just want to ask you, generally, do you have an understanding of what the Tyler Press Review Tool is?

- Q. What is that understanding?
 - A. So my understanding is that documents that are submitted to the eFile & Serve have the ability to be

Page 10

Have you had a chance to review those emails this morning?

- A. Yes.
- Q. Okay. Do those emails that we've premarked as exhibits reflect the communications that you had with Tyler that you just referenced in preparation for today?

MS. DUKE: She actually hasn't seen the emails from today, so I think you guys might be talking about two different things.

THE DEPONENT: I only have the emails that I was party to, either as a carbon copy or as -- or to or from.

- Q. (By Mr. Fetterly) Let me come at it from a different direction. Do those emails cover a particular time frame or time period? An estimate is fine if you can't provide exact.
- A. Yeah, because I don't -- I don't think I even looked at this product until June of 2022.
 - Q. Understood.

So the emails you're referring to would be emails that were approximately June '22 and forward;

- A. Correct.
- Q. Did you have any meetings with Tyler 24 25
 - Technologies that informed, you know, your knowledge or

exposed publicly in another web portal to be viewed prior to being accepted and filed and moved to the case management system.

- Q. Okay. Do you have an understanding of what types of documents could be made available through the press review queue?
- A. Yes. My understanding is documents that are submitted could -- could contain lawsuit filings, any type of requests for court -- not court information, but requests for court decisions, so divorce filings, lawsuits, that kind of thing. Those documents are submitted when folks need the -- the courts to
- Q. And when you say "submitted," submitted to where?
 - A. Submitted to the -- the File & Serve portal.
- Q. Okay.
- A. There's like a queue of documents.
- Q. And do you have an understanding of what documents or what types of documents can be made available into the press review queue? Well, strike that. Let me ask a different question.

Do you have an understanding that the Idaho Courts would have the ability to determine which documents from File & Serve are made available in the

3 (Pages 9 to 12)

30(b)(6) Jennifer Dvorak

	Page 13		Page 15
1	press review queue?	1	Q. (By Mr. Fetterly) Is Tyler eFile & Serve
2	A. My understanding is that they have the ability	2	currently part of or, is there a contract between the
3	to configure some specific case types or document types	3	Idaho Courts and Tyler for eFile & Serve.
4	to potentially move to a press review queue.	4	A. I believe so, but I've never reviewed that
5	Q. Okay. I want to pause on this topic for a	5	contract.
6	minute and just take a step back.	6	Q. Okay. Let me one moment.
7	You had mentioned that you were well, you	7	(Pause in the proceedings.)
8	said you first learned about this in June of 2022; is	8	Q. (By Mr. Fetterly) I'm going to show you another
9	that correct?	9	document. This is a document marked as Exhibit No. 14.
10	A. That's correct.	10	MS. DUKE: Just go to that level tab.
11	Q. And what were the circumstances around which	11	Q. (By Mr. Fetterly) And I can put it up on the
12	you became aware of the press review queue?	12	screen as well here.
13	A. So we had recently performed a security	13	Can you see the screen?
14	review. I had recently performed a security review of	14	A. Yes.
15	the Tyler Enterprise Jury Management product that we	15	Q. Okay. This is a cover letter dated
16		16	August 28, 2013. Have you seen this letter before?
	were that we had procured recently that we were	17	A. I I couldn't say. I don't believe so.
17	working on a contract amendment for. I had completed		
18	that and was asked to do a similar security review on	18	Q. Okay. And it's a cover letter for a a
19	the Tyler press review tool.	19	contract. I don't want to characterize it myself, but
20	Q. Okay. Who asked you to do that review for the	20	if we go to Page 2, and this is Page 1 of 11 that
21	Process Review Queue or press review tool?	21	states and it the Tyler logo is at the top
22	A. I believe it was Sara	22	followed by "Agreement."
23	Q. Okay.	23	Have you seen this document before?
24	A Omundson.	24	A. I'm not sure if I've seen this before.
25	Q. When did you perform the security review for	25	Q. Oh, okay. Can you take a moment
	Page 14		Page 16
1		1	
1 2	the jury manager tool?	1 2	A. I don't
2	the jury manager tool? A. It had been a month or so before. I couldn't	2	A. I don't Q. Oh, go ahead.
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4 (Pages 13 to 16)

30(b)(6) Jennifer Dvorak

Page 17 Page 19 1 August of 2021? 1 A. No, I did not. Well, I did speak with them 2 2 today but not about the case. A. No. 3 Q. Okay. What was your -- where were you working 3 Q. Sure. Yeah, and I'll try to focus my prior to August 2021? questions accordingly. I'm curious about, you know, 4 4 5 A. I was working for the Arizona Department of 5 this case and specifically your preparation for today's 6 deposition. I understand you may have ongoing 6 Homeland Security. 7 7 Q. And for how long were you working with them? communications on a whole host of other matters. 8 A. Ten years. 8 So when was the last time you spoke with Q. And what was your position at the time of your 9 9 Mr. Howland or Mr. Wilson concerning this case or the 10 10 departure? review you were asked to conduct of the press review 11 A. Statewide Information Security Architect and 11 12 Assistant Director. 12 A. Probably when we completed the review, so that 13 Q. And for how long did you hold that position? 13 would've been in August, I think. Q. Okay. And when you say "completed the 14 A. I don't know. Two -- two years. 14 15 Q. What's your highest level of education? 15 review," I'll direct your attention to Exhibit No. 11. 16 A. I have a master's degree. 16 If you could please turn to that. 17 Q. And what's that degree in? 17 A. Yes. 18 Q. This is a document titled "Risk Memorandum 18 A. It's in -- I have a master's of business in 19 management information systems. 19 from the Desk of Jennifer Dvorak" dated August 18, 2022. 20 Q. Okay. I'm going to ask you to please look at 20 Would you consider this the end of the review, 21 Exhibit 2. I'll put that up on the screen as well. or was there some later point in time that you would 21 Do you recognize this document? 22 22 call the end of the review? 23 A. Yes. 23 A. I think we did ask a few follow-up questions Q. What is it? 24 after this review of Tyler, but this was basically the 2.4 25 A. It looks to be an org chart for the ISC. 25 information that I had at the time. Page 18 Page 20 1 Q. And I'll just direct your attention to the 1 Q. Understood. right-hand column. The far right-hand column, I believe 2 2 And I -- I'll direct your attention then to you are identified as Chief Information Security 3 3 Exhibit No. 12. Officer, and it looks like you would report up to 4 4 A. Yes. 5 Mr. Hansen, the Chief Information Officer; is that 5 Q. I believe -correct? 6 6 A. Yes. 7 7 A. Yes, that's correct. Q. Okay. Do you recognize this document? 8 Q. And then on this org chart, there are two 8 A. Yeah. So this would've been one of the 9 individuals below you, Mr. Howland and Mr. Wilson? 9 follow-up questions. 10 10 A. Correct. Q. Were there other follow-up questions after 11 Q. And do both of them report up to you? 11 those posed in this document? A. Yes. 12 12 A. The only other question that we had posed 13 Q. Does this org chart accurately reflect the 13 specific to this tool has been when the API 14 present-day organization of the information services 14 functionality would become available, and I asked that 15 division, to the best of your knowledge? 15 verbally in a meeting with our account manager last 16 A. To the best of my knowledge, but there may be 16 week. 17 a few changes. 17 Q. And what was the answer to that question? 18 Q. Okay. Any changes in terms of your direct 18 A. It was unknown. line of authority or reporting? 19 19 Q. Okay. And why did you ask that question? 20 20 A. Because I was told that it would be available 21 Q. So there are no additional people below you 21 at the end of Q3 or the end of September, and since 22 that should be reflected on this chart that are not? 22 it's -- when we met with them on October 31st, I wanted 23 A. No. there are not. 23 to know if it was available yet because we hadn't heard Q. Okay. In preparation for your deposition 24 24 anything. today, did you speak with Mr. Howland or Mr. Wilson? 25 25 Q. Okay. Are the Idaho Courts currently planning

5 (Pages 17 to 20)

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I'm referring to the press review queue, I'm also

30(b)(6) Jennifer Dvorak

Page 21 Page 23 1 to implement a press review queue using the APIs? 1 referring to the press review tool, and vice versa? 2 MS. DUKE: And I'll object to the form. 2 A. Yes. 3 Q. Okay. And I'll try to stick with Press Review 3 Go ahead. THE DEPONENT: I think we are 4 Tool going forward. 4 5 investigating whether or not the API is available and 5 A. Okay. 6 Q. Have the Idaho Courts asked Tyler to provide 6 what functionality or cost would be included in that 7 7 any demonstrations of the Press Review Tool? API. 8 Q. (By Mr. Fetterly) Okay. So I believe we just 8 A. I think so, yes. When we inquired about it 9 spoke to the issue of availability. Is anything --9 in -- when I was made part of the conversation in June, 10 we did ask for more information, can we look at -- take 10 anything more to that? a look at the product? We were provided with a -- a A. As far as I know, it's not available. I don't 11 11 12 12 have any additional information about the functionality marketing sheet about it, but no demo. 13 13 Q. Okay. Did the Idaho Courts specifically ask 14 Q. Okay. As far as the functionality, have steps 14 for a demo? 15 15 been taken beyond the review process that we were A. I couldn't say. I don't recall. I think that 16 discussing that's reflected in Exhibits, you know, 11 16 when we engage our account manager to look at a new 17 and 12 that have been taken to examine functionality? 17 product offering by Tyler, it's implied that a demo 18 A. It's hard to assess functionality when I 18 would be part of that conversation. 19 haven't been notified that it's available so that I 19 Q. Were you at the -- during any of the meetings that you were present at, did anyone from the Idaho 20 could assess the functionality. 20 Q. Okay. What -- what do you understand 21 Courts specifically ask for a demonstration of the press 21 assessing functionality to entail? 22 22 review tool? 23 A. I'd like to understand what fields out of 23 A. We definitely asked for more information about 24 24 File & Serve are available, how the API is secured, and how it works, which I would presume a demo would be the 25 what the costs are associated. 25 easiest way to provide that information. Page 22 Page 24 1 Q. Is it your understanding, then, that Tyler --1 Q. Okay. I'm not sure you're answering my 2 question. So I --2 well, strike that. Has Tyler provided you any information, to 3 3 A. I don't know that we -- I don't know -date, on either of those three items? 4 4 Q. Go ahead. 5 A. We were told it would be made available at the 5 A. I don't know that we used the words "demo," end of Q3 or the end of September, and so far we 6 but we did ask for more information. Can you provide us 6 7 7 haven't -- it's not available to us. So we've been all the information about this tool? And, for me, that asking and we just haven't received any information. 8 would assume that a demo would occur. 8 9 Q. Did the Idaho Courts contact any of the other 9 Q. Have you ever used the Tyler press review 10 10 state courts that use a Tyler Press Review Tool to ask 11 A. I don't know how I could when it's not a 11 about their experience with the Press Review Tool? 12 product we currently own. 12 MS. DUKE: I'll object to the form. 13 Q. So is that a "no"? 13 Foundation. 14 A. Yeah. We don't -- it's not a product that the 14 Go ahead. 15 15 THE DEPONENT: That I'm aware of, we did ISC currently owns so I've not been able to use it. 16 16 Q. Yeah. Have you -- to your knowledge, has not. I did take a look at some of the states that are 17 using the Tyler Press Review Tool, their websites, and 17 anybody with the Idaho Courts used a Tyler Press Review 18 one of the websites I went to did not have an HTTPS/SSL 18 Tool? 19 certificate, so I was a little bit concerned about that, 19 MS. DUKE: Object to the form. 20 and that was the furthest investigation I did. 20 THE DEPONENT: Yeah. I -- not that I'm 21 Q. (By Mr. Fetterly) Okay. And what state was 2.1 aware of. 22 Q. (By Mr. Fetterly) Okay. And just to be clear, 2.2 23 A. I believe it was Clark County in Nevada. 23 I think I'm using "Press Review Tool" and "press review Q. And when did you go to their website? 24 24 queue" interchangeably, but do you understand that if

6 (Pages 21 to 24)

A. Probably after we met with Tyler in July about

25

30(b)(6) Jennifer Dvorak

	Page 25		Page 27
1	the Press Review Tool.	1	A. I believe so, yes.
2	Q. And what did you do? Please walk me through	2	Q. Okay. And then go I see on the right-hand
3	the steps you took to kind of review their site and form	3	column of this document there's a button that says
4	the basis of what you just said.	4	"click here to e-file." Do you know where that button
5	A. So I visited Clark County, Nevada's website	5	takes you if someone were to click on that?
6	for the courts, and I looked for the the link to	6	A. I don't, no.
7	their court portal or court information. However, when	7	Q. Okay. I'm going to show you Exhibit No. 17.
8	I went to their website, it was not securely displaying,	8	Do you recognize this document?
9	so I left the website.	9	A. Yes.
10	Q. What do you mean when you say "not securely	10	Q. And what is this?
11	displaying"?	11	A. Well, I assume that's what happens when you
12	A. So it did not have a valid SSL certificate.	12	click the button.
13	So modern web applications, websites use HTTPS and SSL	13	Q. And I guess the question is: Is this also
14	certifications. Clark County's court website did not.	14	public-facing?
15	Q. Mm-hmm.	15	A. I believe so, yes.
16	Do you have an understanding of whether the	16	Q. Okay. So and would you agree that the
17	Tyler Press Review Tool is hosted on local courts'	17	eFile & Serve system does have a public-facing
18	websites as opposed to Tyler's websites or websites	18	component?
19	hosted by Tyler?	19	A. Yes.
20	A. I believe that it is hosted by Tyler	20	Q. Okay. And that would be the component that
21	Technologies.	21	allows filers to submit their filings to the court;
22	Q. Okay. Does Tyler Technologies use HTTPS	22	correct?
23	security?	23	A. So anyone submitting a document would need to
24	A. I believe they do, yes.	24	register or sign in first.
25	Q. Okay. And the Idaho Courts use Tyler	25	Q. Okay.
	Page 26		Page 28
1	Technologies for e-filing; correct?	1	A. So that functionality is not available
2	A. Yes.	2	nublioly l
3			publicly.
	Q. And does the and I believe that e-filing	3	Q. Understood.
4	occurs through iCourt eFile & Serve; is that correct?	3 4	Q. Understood. So I guess that's let me try to just
5	occurs through iCourt eFile & Serve; is that correct? A. Yes.	3 4 5	Q. Understood. So I guess that's let me try to just understand then what you mean when you talk about
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7 (Pages 25 to 28)

30(b)(6) Jennifer Dvorak

Page 29 Page 31 1 Q. Okay. So then once -- I can show you this 1 beyond the submitting of files before they're exact -next page, Exhibit No. 18, do you recognize this 2 2 before their accepted into the case management system. 3 Q. (By Mr. Fetterly) I understand that. I guess I 3 document? 4 was just -- you identified public-facing as a potential 4 A. No, because I've never logged in. I don't 5 concern, and I'm just trying to understand whether this 5 have the need to log in to the e-filing, but I assume process of registration and sign-in addresses that 6 that once you log in that this is what you receive. 6 7 MS. DUKE: I can grab my legal assistant. concern, or if there are other things that would, you 7 know -- that are required to sufficiently address that 8 She'll know well. 8 THE DEPONENT: Yeah. 9 9 concern. Q. (By Mr. Fetterly) Well, just so I understand 10 10 MS. DUKE: Same objections. Asked and your response, what leads you to conclude or assume that 11 11 answered. this is what you would see after you've logged in? 12 12 Go ahead. 13 A. Filer dashboard, filing activity, start a new 13 THE DEPONENT: Yeah. I would just say 14 case. I don't know that this would be information that 14 that there are additional concerns because there's 15 would be accessible without registration or log-in. 15 additional layers of security even on a public-facing 16 Q. Okay. But just to confirm, you've never 16 website. And I -- because I haven't received 17 registered or logged in yourself; is that correct? 17 information regarding the security controls and tools in A. No, correct. use by Tyler Technologies, I don't understand what 18 18 19 Q. Okay. So we were talking about 19 additional controls would be available. Logging in is eFile & Serve specifically and whether it is just one of those concerns being addressed. 20 20 21 public-facing, and we just talked about how part of the Q. (By Mr. Fetterly) Okay. But the courts 21 currently use eFile & Serve; correct? 22 eFile & Serve system through iCourt is 22 23 public-facing, but then once a register -- once a user 23 A. I believe so, yes. 24 registers and logs in, they're now on a different side Q. Okay. Have -- has the administrative office 24 25 that you would consider not public-facing; is that 25 notified Tyler of any additional information it needs Page 30 Page 32 1 correct? 1 with respect to eFile & Serve? 2 2 A. So we haven't done a -- like I mentioned A. That's correct. 3 Q. And does that registration and logging-in 3 previously, we haven't done a full security review on 4 process address the concerns that the Idaho Courts would this program, this service because it is already under 5 have with respect to public-facing websites? 5 contract is my understanding. So we are only able to MS. DUKE: Object to the form. б 6 provide security oversight or security review on new 7 Foundation. 7 products per the contract or amendment -- contract 8 Go ahead. 8 amendment process. So we don't have the ability to 9 THE DEPONENT: I think that it provides 9 compel our vendors to provide information about their 10 the ability to audit who was assess -- accessing this 10 security controls unless it's embedded in the contract 11 information beyond what is publicly-facing. 11 process. We can ask them and they can tell us or not 12 Q. (By Mr. Fetterly) Okay. 12 tell us, but they're not particularly compelled to 13 A. It provides -- yeah. Sorry. Let me think it 13 provide that information. 14 through. It provides an audit trail for the types of 14 Q. And I guess I was asking a slightly different 15 question. I mean, has the administrative office 15 documents that are being submitted for filing. Q. (By Mr. Fetterly) Okay. And does that audit 16 notified Tyler of any concerns it has with respect to 16 17 trail address the concerns that the court has with 17 eFile & Serve? MS. DUKE: Asked and answered. respect to the public-facing nature of eFile & Serve? 18 18 19 MS. DUKE: Again, same objection. She's 19 Go ahead. THE DEPONENT: Not that I'm aware of, but 20 also here on behalf of the Administrative Officer for 20 2.1 we also -- we don't know what we don't know. So it's 22 not something that we've been able to investigate because it's not a product that we're currently 23 24 negotiating a contract for or we have a contract

8 (Pages 29 to 32)

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amendment underway.

30(b)(6) Jennifer Dvorak

Page 35

Page 36

Page 33 1 Q. (By Mr. Fetterly) Has the administrative office 1 this discussion, but I wanted to give you all the 2 informed Tyler Technologies that it would like to 2 heads-up that it will be part of the contract amendment 3 investigate the functionality or security of 3 discussions." eFile & Serve? 4 Q. Okay. I want to break that up a little bit 4 5 A. No. Because, again, it's not something that 5 6 6 we're negotiating a contract with or a contract 7 7 amendment. So we have other Tyler products that we're 8 currently negotiating a contract or contract amendment 8 9 9 for and those are included in the security review. management process? 10 Q. When is -- if you -- when is the Tyler 10 e-filing agreement -- this would be the contract between 11 11 12 Tyler and the administrative office with Idaho Courts 12 concerning e-filing. When is that contract up for 13 13 14 amendment? 14 15 15 A. I don't know. 16 Q. Okay. 16 17 A. Actually, well, I'll -- I'll revise that. I 17 do know the Press Review Tool, adding that would require 18 18 19 a contract amendment. So at that time, we would have 19 20 the opportunity to do a full security review as part of 20 21 that contract amendment. 21 A. Yes. 22 22

Q. Okay. I would like to direct your attention to Exhibit No. 10. Once again, I'll put it back up on the screen.

A. Mm-hmm.

and try to better understand this. So where it says "as part of our new risk authorization and management process," can you elaborate on -- on what that is or what that means, the new risk authorization and

A. So as part of our new contracting with cloud vendors process, so this was created as part of -- we have a -- a credit card request for proposal which will be a cloud-based solution. I worked with our general counsel to develop a cloud-based terms and conditions to add to all of our cloud-based vendor contracts, so that is the new risk authorization management process. It's built into the cloud vendor terms and conditions.

- Q. And just for quick reference, if you could hold your spot there at Exhibit 10, but I'd like to then direct your attention to Exhibit 19.
- Q. Are these the terms and conditions that you just referenced?
 - A. Correct, yes.
 - Q. Okay. And when were these created?

Page 34

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- Q. Have you seen this document before?

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- Q. And what is it?
- A. This is an email between myself and Jessi Fisher, our client executive, about functionality within the Press Review Tool.
- Q. Okay. And I'd like to direct your attention to, I guess, Page 3. The bottom right-hand corner would be SO 5117.
 - A. Yes.
- Q. Great. I'm going to highlight something for you, but let me -- I'll point to the bottom paragraph here, the paragraph that begins "As part of our new risk authorization and management process."

Do you see that paragraph?

- A. Yes.
- Q. Can you please read that paragraph?
- A. "As part of our risk authorization and management process, we will be requiring vendors storing, processing, and/or transmitting ISC data into

20 third-party laaS/PaaS environments, AWS, Azure, GCP, et 2.1

- cetera, to provide a letter from their provider stating 2.2 23 they are a customer in good standing and identifying
- 24 which environment ISC data will be stored and/or
 - traversing. I don't need the letter for the purpose of

A. These were -- oh, gosh. I'm not sure. They were created as -- again, as part of our new credit card request for proposal, and that would've been maybe in the spring of this year.

Q. Okay. So is it correct, then, that these terms and conditions did not exist prior to this year?

A. No, they did not. Yeah.

- Q. Okay. And who was involved in creating them? I think you mentioned yourself and at least one other person. Can you identify the other people besides
- A. So myself and David Roscheck, who is our deputy legal counsel for ISC.
- Q. Okay. And you said that they were created in connection with a new credit card RFP. Did I hear that correctly?
 - A. That's correct.
- Q. And what is that?
- A. That is a -- we are looking for services to process our credit card payments.
- Q. Is -- does this have any connection or relation to the Tyler eFile & Serve and filing fees that would be submitted through File & Serve?
 - A. Nope, it's completely separate --
 - Q. Okay.

9 (Pages 33 to 36)

30(b)(6) Jennifer Dvorak

	Page 37		Page 39
1	A as far as I'm aware.	1	correct?
2	Q. So payments other than e-filing payments; is	2	A. No. Because as far as I know, the contracts
3	that accurate?	3	are already well underway.
4	A. Correct.	4	Q. But the Idaho Courts will require those terms
5	Q. Okay.	5	and conditions to be part of any future contracts or
6	A. So any court fees that we collect. There is a	6	amendments to contracts; correct?
7	mix of credit card providers throughout the state, so	7	A. For any cloud-based services, yes.
8	this would bring us under one provider.	8	Q. Understood.
9	Q. Okay. Has the administrative office asked	9	And would that include eFile & Serve?
10	Tyler to or strike that.	10	A. Yes.
11	Do these terms and conditions apply to any of	11	Q. Would that include Portal?
12	the Tyler services or Tyler contracts?	12	A. Yes.
13	A. As far as I know, the Tyler contracts are	13	Q. Okay. What other Tyler products would require
14	already underway, so this would apply to new cloud-based	14	these terms and conditions?
15	contracts moving forward.	15	 A. All all of them that are cloud-based.
16	Q. Okay. So I now I'll ask you to go back to	16	Q. Okay.
17	Exhibit No. 10.	17	A. So if they're not if they're not hosted in
18	A. Okay.	18	our data center, they would be any and not just
19	Q. And that same bottom paragraph. So the last	19	Tyler products. Any product not hosted in our data
20	sentence where you state: "I wanted to give you all the	20	center will be required to go through this process.
21	heads-up that it will be part of the contract amendment	21	Q. Okay. Are there any Tyler products that are
22	discussions."	22	currently hosted in the Idaho Courts data center?
23	A. Correct.	23	A. Yes.
24	Q. Is that what you're referring to then,	24	MS. DUKE: And beyond the scope of the
25	incorporation of these terms and conditions into	25	30(b)(6), but go ahead.
	Page 38		

amendments to the Tyler contracts going forward?

- A. Yes, because I did ask them for the third-party letter and they said no, they would not be -- they would not be providing it to me.
 - Q. Okay.

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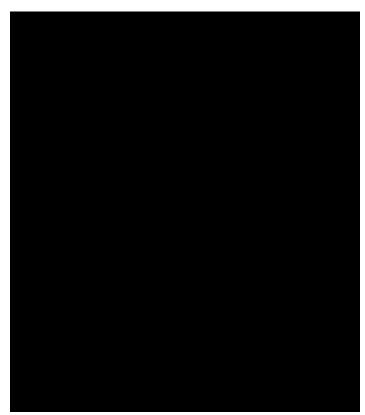
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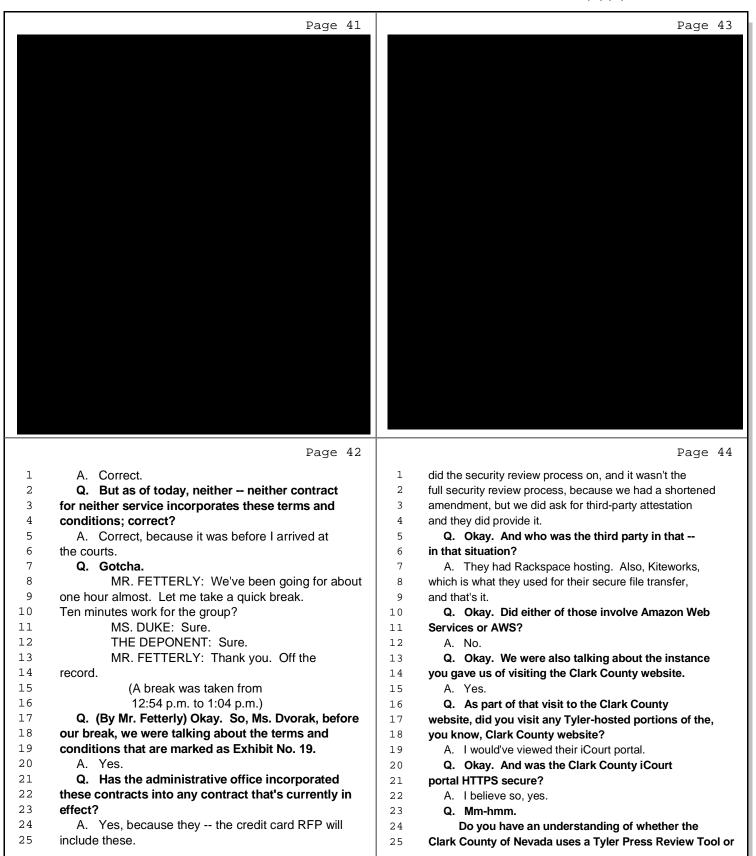
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- A. So I wanted to let them know that they would need to as part of our new contracts moving forward.
- Q. Okay. And pause there for a minute. We'll get into that in a little more detail going forward.
- In this same paragraph, you state: "I don't need the letter for the purpose of this discussion." What did you mean by that?
- A. Well, I was responding to the fact that they would not provide it to me. So because this was not a product that we were in the process of purchasing, we didn't need it as just a preliminary review. But if we did end up purchasing it, we did end up with a contract amendment, it would be a requirement.
- Q. And when you were talking about "this product," you're referring to the Press Review Tool?
 - A. Yes.
- Q. Okay. So just to make sure that I'm understanding you correctly, the -- the terms and conditions that we just talked about as Exhibit 19, those are not currently part of any Tyler contract;



10 (Pages 37 to 40)

30(b)(6) Jennifer Dvorak



11 (Pages 41 to 44)

30(b)(6) Jennifer Dvorak

Page 45 Page 47 1 Auto-Accept tool? 1 was asked to review was the cybersecurity portion. 2 A. I believe so. I believe that they were one of 2 Q. Okay. 3 3 the customers that currently uses the product. A. And that is reliant on our particular Q. Which product? 4 4 configuration. I wouldn't be able to comment on another 5 A. The Press Review Tool. 5 state court's configuration or how they used the Press Q. Okay. Did you contact or did the 6 6 Review Tool. 7 administrative office contact anyone at Clark County to Q. Okay. 7 8 request, you know, access to the press -- their Press 8 MS. DUKE: And I just want to be clear 9 **Review Tool?** 9 that she did previously testify, you know, they all but 10 A. Not that I'm aware of. 10 said we want a demo and they haven't been provided that Q. Did the administrative office contact any 11 11 by Tyler; so... 12 other state courts to request access to their Press 12 MR. FETTERLY: Okay. I believe that 13 **Review Tools?** 13 misstates the testimony, but in any event --14 A. I wouldn't have knowledge of who they 14 THE DEPONENT: But -- okay. 15 contacted. I know that I didn't contact them. 15 Q. (By Mr. Fetterly) But as part of your 16 Q. Okay. Did the administrative office contact 16 cybersecurity review, you did not, you know, review 17 Tyler to request the opportunity to view any of the 17 or -- I guess you did not use or test any of the Press existing Press Review Tools used by other state courts? Review Tools that are currently in existence through 18 18 19 MS. DUKE: Asked and answered. 19 other state courts that use the Press Review Tool; 20 Go ahead. 20 correct? 21 THE DEPONENT: I know that I didn't. 21 MS. DUKE: Same objections. 22 Q. (By Mr. Fetterly) Okay. Do you have any reason 22 Go ahead. 23 to believe that somebody else did? 23 THE DEPONENT: That's correct. I didn't. 2.4 A. I don't -- I don't -- I don't go to all the Q. (By Mr. Fetterly) Okay. Let's turn now to 24 25 meetings that all of our folks have with Tyler 25 the -- the cybersecurity review that we've been talking Page 46 Page 48 1 Technologies. I know they meet pretty regularly, so I 1 about. If I could just direct your attention back to 2 2 don't -- I wouldn't -- I wouldn't know. Exhibit No. 11. Q. Okay. But if I understand correctly, the 3 3 And let me know when you have that in front of administrative office has not used any of the Press 4 4 you. Review Tools that are available through other state 5 5 A. It is, yes. courts; is that correct? Q. Okay. Earlier, you were telling us that you 6 6 7 7 did a similar review for the Tyler jury manager product. MS. DUKE: Object to the form. Asked and 8 8 Did that review resemble or reflect the level of answered. Foundation. 9 9 analysis that's reflected in this review? THE DEPONENT: Yeah. Again, I wouldn't 10 have all that information. I can only say what I've 10 A. It actually was more comprehensive because I 11 done, and I haven't done that. 11 had more information about that product and the data 12 Q. (By Mr. Fetterly) But we are -- you have been 12 types that would traverse it. 13 produced today as a witness -- as a 30(b)(6) witness to 13 Q. Okay. Understood. 14 speak on behalf of the administrative office with 14 And what was your --15 respect to the categories we've identified, which 15 A. So -- and -- and just to clarify, so jury 16 include testing and functionality of the Press Review 16 management is a purchased product, so that's also the 17 Tool. So we are entitled to know whether the 17 difference. Press Review Tool is an unpurchased 18 administrative office has taken steps to, for instance, 18 product. We haven't purchased it. 19 you know, use or test the Press Review Tools that are 19 Q. Mm-hmm. Maybe you can help me understand. 20 made available by other state courts. 20 I'm having a hard time following one thing. It seems 21 So if you don't know, is there somebody else 21 like there's maybe a bit of a chicken-and-egg situation 22 in your office who would know? 2.2 here where because it's not purchased or implemented 23 A. I don't know. I just know that I -- I haven't 23 there's information you don't have, but you're claiming you need information in order to move forward and 24 done that. I've been on several conversations about the 24 25 Press Review Tool, but my -- the major component that I 25 purchase.

12 (Pages 45 to 48)

Courthouse News Service v. Omundson

30(b)(6) Jennifer Dvorak

Page 51

Page 49

would be planning on joining those organizations. And those include a third-party assessment, so as part of that process, that would provide us the assurances that we're looking for. So if they do become FedRAMP or StateRAMP authorized, we could use that in lieu of having these terms and conditions that rely on our own risk authorization management process.

Q. Is Amazon Web Services' GovCloud StateRAMP or FedRAMP qualified or certified?

A. It is on GovCloud, but StateRAMP and FedRAMP are specific to products on top of that platform. So there are questions about how you do authentication, how you do audit, how do you manage your logging, how do you manage your third-party assessments of vulnerabilities. Those would be all part of the vendor supplier. Those would not be on the underlying platform.

Q. Yeah. Insofar as the Idaho Courts are concerned about cloud-based services for hosting, if -- if the Idaho Courts data is stored on GovCloud, does that satisfy or address any concerns the Idaho Courts have regarding the security of that data?

A. It provides certain -- it provides for a certain level of security for the data. However, there's overlying configuration options that the vendor manages that would not be included as part of being in a

Page 50

Page 52

August 2021.

Q. Okay. And have the Idaho Courts requested that Tyler agree to amend its e-filing agreement for the specific purpose of incorporating the terms and conditions that are reflected in Exhibit 19?

A. As far as I know, they have not, but that's because we have additional purchases that -- that we are working through with Tyler. So we're doing security review on some of their other products, so there will be overlap in some of their answers from those products.

Q. And what other products are currently undergoing security review?

A. So the Odyssey SaaS, so security as a service product. Tyler Technologies, while we are currently not under contract, they did ask if they could begin taking a look at the process. And some of the audit questions that we do ask as part of our risk authorization process ask general questions about their organization, so those general questions about their organization could be utilized across products.

Q. Mm-hmm.

A. We've also asked them if they have plans to join StateRAMP or FedRAMP, which is the state or the federal risk authorization management programs. And they have stated that it is on their roadmap, that they

GovCloud.

Q. And what are those?

A. It would be the same things I stated. So whether or not they're doing any kind of external vulnerability or penetration tests, whether or not they're remediating those findings, how they perform authentication, how they manage operating system patches, how they manage antivirus patching, all of that is controlled by the vendor on top of the data storage layer.

Q. Okay. And do the Idaho Courts currently have any concerns in that regard with respect to Tyler's eFile & Serve system and any cloud component to that system?

A. They're unknown at this time. We have no information about how they're managing that process. So, again, if we had StateRAMP authorization, FedRAMP authorization, or if we're able to conduct our own risk authorization, we would have a level of comfort with those products.

Q. So are the Idaho Courts presently concerned about the security of their data that's, you know, held by or traversing through eFile & Serve?

A. I think it's limited because it's not publicly accessible. So what happens is, again, it's log-in

13 (Pages 49 to 52)

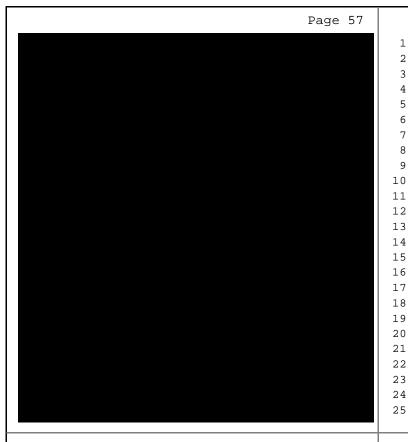
30(b)(6) Jennifer Dvorak

Page 53 Page 55 1 functionality, there is an audit trail for who is 2 uploading documents, and it's reviewed by a person prior 3 to being brought into the case management system. 4 So, again, there's processes built into --5 it's not publicly accessible. It's not something that 6 anybody off the street could just come in and have 7 access to. 8 Q. Mm-hmm. I want to go back to the risk 9 memorandum here to get a better understanding, then, of 10 what -- what review you did. Let me -- I can put that 11 up on the screen so we can be looking at the same 12 document, but I'd ask you to go to Exhibit No. 11. 13 A. Yes. 14 Q. Okay. Okay. So let's see. Let me -- let me 15 just first ask you to go to Page 3 here. This is 5531. 16 It's a three-page document. 17 A. Yes. 18 Q. Have you seen this document before? 19 A. Yes. 20 Q. And what is it? 21 A. This is our risk analysis matrix, how we 22 23 Q. Okay. And was this prepared unique to the review of the Press Review Tool, or did it -- is it --2.4 25 does it apply more broadly? Page 54 Page 56 1 Q. Okay. And does the jury management product or 2 system include any cloud-based technology? 3 A. Yes. 4 Q. Okay. Going back to this risk analysis memo, so the Press Review Tool, this is the second time that 5 it's been used; correct? 6 7 A. Correct. 8 Q. I see that this document has Pages 1 of 5 on 9 the bottom left-hand corner. When I scroll down, I see 10 Page 2, I see a Page 3, and then I see some other -- a 11 different document that we'll talk about separately. I 12 don't see Pages 4 and 5. 13 Are there Pages 4 and 5 to this document? 14 A. I don't believe so. 15 Q. Okay. So would you characterize the 1 of 5, 2 of 5, 3 of 5 as a typo? 16 17 A. I believe so, yes. Q. Okay. Did anyone besides you prepare this 18 19 risk analysis memorandum? 20 A. No. Q. Okay. And I think you kind of answered it, 2.1 but I just want to be clear, for approximately how long 2.2 23 has this been in effect with the Idaho Courts? 24 A. I would say it's new as of this year. Q. Can you give me an estimate of when in this 25

14 (Pages 53 to 56)

30(b)(6) Jennifer Dvorak

Page 59



Q. And when you say you make the assessment, the person conducting the review makes the assessment?

A. Correct.

Q. And in the context of the Press Review Tool, you were that person; correct?

A. Yes.

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Q. Okay. Looking at the chart where it says likelihood, I see we have five options, very likely, likely, possible, unlikely, and unlikely [sic]?

A. Mm-hmm.

Q. Is -- is there some standard or methodology for determining when the likelihood is possible versus one of the other four options?

A. So I think in the case of this particular product, because I wasn't provided all the information that I requested, it just landed in the middle of possible. I don't -- I don't know the possibility or the likelihood of it occurring.

Q. Would you agree that very likely, likely, unlikely and unlikely are all possible?

A. I don't know, because, again, I wasn't provided the information I requested. I would have a better understanding if it was a system that I controlled. But beyond that, I can only go based on the information that I receive from the vendor.

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Page 60

see that?

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A. Yes.

Q. Can you just kind of walk me through how this works? As you're the author of this document, I'm just looking for a little -- if you can elaborate, explain to me kind of how this table works.

A. So -- so you're looking at the -- so it's not an independent graphic, so it's used in conjunction with the table ahead of it. So we look at loss of confidentiality, so what is the likelihood of loss of confidentiality? What would the impact be and what is the likelihood?

So in using that graphic below, we try to understand what the impact would be if this information was -- the confidentiality was not in -- was out of your control. So if nonpublic data was disclosed, what would the impact be to the organization? What fees and fines? What regulatory requirements would you be breaking? What loss of goodwill? So understanding what that impact would be, the greater the impact, the more you move to the right. And then also the likelihood, so what is the likelihood of this occurring? And so for each of those, confidentiality, integrity, and availability, you make this assessment for each of those.

- Q. So would you say that possible here was based on the lack of information as opposed to based on information received?
- A. Definitely. I -- I requested the information. I didn't receive it, so I wasn't able to move forward with any -- any other likelihood.
- Q. Same -- same question with respect to impact. Is there a standard or methodology when determining whether an impact is negligible or minor or moderate and so forth?
- A. So, again, it's based on understanding of regulatory requirements, applicable laws, court rules, recovery, and just goodwill, so there isn't an exact -it's not an exact science, but it's based on my many years in cybersecurity.
- Q. And so the -- the intersection between likelihood and impact then, is it -- is it one that you would apply then just depending on the product? So it's not necessarily a consistent or standard application, but more of a -- kind of a subjective application depending on the product you're reviewing?
- A. No. It would actually be based on the data types, so the data that's contained. The impact is significantly tied to the data. It's not product based.
 - Q. Understood.

15 (Pages 57 to 60)

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the Idaho Court-hosted aspects of the Tyler products or

products and services would be Azure?

A. I don't understand the question.

scope of the 30(b)(6).

knowledge, if you know.

Odyssey products, the web-based laaS provider for those

MS. DUKE: And, again, this is beyond the

You can answer from your personal

30(b)(6) Jennifer Dvorak

Page 61 Page 63 1 So for likelihood, in this case, it was you 2 didn't have enough information to form a different conclusion, so you landed on possible. But for impact, 3 you are capable of forming a conclusion based upon the 4 5 data at issue; is that correct? 6 A. That is correct. 7 Q. Okay. So let's go back up now to the first 8 page of this document. I want to start to walk through Q. (By Mr. Fetterly) Okay. So the Idaho Courts do 9 it so I can better understand it. 9 Did anybody assist you in the preparation of 10 10 not use a third-party laaS provider for that data? this document, Exhibit No. 11? 11 11 A. Correct. 12 A. No. 12 Q. Moving on to the next sentence on this 13 Q. Starting with the first paragraph where it 13 Exhibit No. 11, it says: "Tyler Technologies has 14 says: "The Tyler Press Review Tool is a hosted 14 indicated that they comply with applicable statutory and 15 software-as-a-service solution in which the vendor and a 15 regulatory compliance." 16 third-party infrastructure-as-a-service provider manage 16 A. Yes. They did make that general statement to 17 all the underlying architecture." 17 18 I just want to better understand that. In 18 Q. Any reason to believe it is not true? 19 this sentence, when you say "the vendor," who is the 19 A. I have no reason to believe either way. They 20 20 just made the statement. 2.1 A. The vendor would be Tyler Technologies. 21 So, typically, when you do an assessment, you 22 Q. Okay. And where we say 22 would ask for a statement and then you would also ask "information-as-a-service provider," who are you 23 23 for a show of proof of compliance. And they have shown 24 24 referring to there? no proof, so that's just the statement that I received 25 A. AWS. 25 from them. Page 62 Page 64 1 Q. But just to be clear, no reason to believe 2 2 provider for any other products? that it is not true; correct? 3 3 A. Not outside of Tyler Technologies' product MS. DUKE: Object to the form. Misstates 4 4 her testimony. 5 Q. Okay. Let me just ask it a little bit 5 Go ahead. 6 6 differently. THE DEPONENT: Yeah, I can't -- I can't 7 7 Does the Idaho Court use any other vendors speak either way because I don't know. 8 8 that use Amazon Web Services as their laaS? Q. (By Mr. Fetterly) What would be required --9 A. No, not that I'm aware of. 9 what would you require in order to be able to know? 10 Q. What laaS providers do the Idaho Courts use? 10 A. I would need them to document what applicable 11 A. We use Azure. 11 statutory and regulatory compliance that they meet and 12 Q. And for how long have the Idaho Courts used 12 also provide documentation showing that it does meet. 13 13 So, for instance, if they say we follow a NIST-compliant 14 A. Prior to my joining the ISC. 14 framework, I would want to see how their framework 15 Q. Any others? 15 aligns with NIST requirements. A. Not that I'm aware of, no. 16 Q. Okay. So I guess -- but you spoke in 16 Q. So where we're -- where we're talking about 17 17 generalities. Is there something specific that you have

16 (Pages 61 to 64)

requested from Tyler that the Idaho Courts have not

A. Yes. Well, again, because this isn't a

contracted -- this isn't a contracted solution, we have

asked it for other products and we were not provided the

received that would be relevant to understanding -- your

understanding of whether or not their statement is true

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or not true?

information; so...

Page 65

Courthouse News Service v. Omundson

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30(b)(6) Jennifer Dvorak

Page 67

Q. Has the administrative office asked for this information in connection with contracted products?

A. No, because they're already under contract. So our process is built into a new contract or an amendment of an existing contract.

Q. Earlier, I thought I heard you say that part of the -- whether you -- that the Idaho Courts request information that, you know, Tyler might be contractually obligated to provide, so I guess I'm trying to understand how this works. Either you're under a contract and they're contractually obligated to provide it, or you're not under a contract and there's no contractual obligation.

Can you explain to me how that works in terms of the Idaho Courts requesting and obtaining this information?

A. So as part of our cloud-based terms and conditions, we do ask the vendor to complete our risk authorization and management process. Part of that process is asking questions about their security controls and asking for them to provide documentation or attestation to that effect.

So we might ask for, you know, you're doing security awareness training for all of your employees every year, can you provide proof of that? And,

I made.

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Q. Is the audit questionnaire that you just referenced in relation to the Press Review Tool, or is it the, you know, broader, you know, Tyler offering of products and services?

A. Some of the questions are organization-specific and some are service-specific or product-specific. So the questions about the organization would be applicable to all of Tyler's products.

Q. And does this product ask questions about the Tyler eFile & Serve service or product?

A. In particular, no.

Q. Okay. What about the Tyler Portal product?

A. No. Not in particular, no.

Q. Mm-hmm. And what about the Tyler case management system product?

A. For their SaaS offering, yes.

Q. Okay. But just to be clear, to date, Tyler has not provided, I guess, the -- the complete level of information requested by the Idaho Courts in connection with any of its products; is that correct?

A. That's correct.

Q. Mm-hmm. Are the Idaho Courts currently considering, you know, switching to other vendors?

Page 66

typically, that would be a screenshot of your learning management system or your employee files that say that you've completed the -- the training. So that would be the -- the proof that we're looking for, but that is just part of working through a new contract or an amendment.

This was -- this review was based on information that I received from Tyler. It was very minimal. It didn't provide any information about their security program as part of this review.

Q. And the level of detail that you've just referenced, has Tyler agreed to provide that in connection with any product used by the Idaho Courts?

A. They have agreed to work with us to potentially give us that information, but they have not agreed to give us that information yet.

Q. Okay. Do you have an understanding of where that process currently sits? Has any information been provided? None to date? You know, where -- where do things currently stand on that?

A. We have some information. So they did take a first pass at our audit questionnaire. Some of the questions are just -- the answers are restated of what I asked for. They don't provide any detail and there's no documentation or -- or proof in any of the requests that

Page 68

MS. DUKE: Beyond the scope of the 30(b)(6). Yeah, I'm actually going to instruct her not to answer. I don't know how that's relevant, and I'm not going to get into a fight with Tyler whether there's some kind of tortuous interference with contract or something as a result of this suit. So...

MR. FETTERLY: Okay. Instruction noted.

Q. (By Mr. Fetterly) I wanted to continue on down, then, in this paragraph where we -- let's see. There's a sentence here that states -- following the one that we just discussed where we talked about Tyler Technologies has indicated they comply with the applicable statutory and regulatory compliance, and you stated you have no reason to believe either way whether that's true or untrue.

The next sentence goes: "And while PRT isn't named specifically, it is included in their SOC 2 Type 2 audit report as part of eFile & Serve."

So I guess my first question to you is: What is the SOC 2 Type 2 audit report?

A. That is a third-party assessment of security controls.

Q. And who or what is the third party that provides that assessment?

A. I'd have to go back and look at their SOC 2.

17 (Pages 65 to 68)

30(b)(6) Jennifer Dvorak

Page 71

Page 69 1 I don't remember the name of the company that provided 1 have -- and just to be clear, I'm talking about the 2 August 16th email, 11:50 a.m., Jessi Fisher to you. Do Q. Is this something that's typically requested you see that? 3 3 in connection with risk analysis? A. Yes. 4 4 5 A. Yes, and it's built into our cloud-based terms 5 Q. The first sentence of the first full paragraph states: "The Press Review Tool's communication with our 6 and conditions. 6 7 Q. Mm-hmm. And was that something that was 7 eFiling Manager, EFM, all takes place within Tyler's 8 requested specifically in connection with this risk SaaS-operated network within the AWS GovCloud." A. Yes. 9 analysis? 9 10 A. No. It was actually requested as part of the 10 Q. Do you have any reason to believe that that 11 Enterprise Jury Management product. 11 sentence is not accurate? 12 A. All I have is to go on -- based on what the 13 information they've given me, so I have no reason to 14 believe it or not believe it. I mean, that's what they 15 16 Q. Okay. Where it talks about the eFiling 17 Manager, do you see that reference? Is the eFiling Manager within 18 19 eFile & Serve or part of eFile & Serve? 20 A. I believe so, yes. Q. Okay. This SOC 2 audit that we're discussing, 2.1 22 you said it was received in connection with jury 23 manager, so that would've been received earlier this year; is that correct? 2.4 25 Q. Okay. Do the Idaho Courts have this SOC 2 A. Correct. 25 Page 70

Page 72

1 audit report? 2

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A. Yes.

Q. And does the SOC 2 audit report cover eFile & Serve?

A. It does, yes.

Q. Okay. And any reason to believe that Tyler --Tyler's statements are not correct, that the Press Review Tool is part of their SOC 2 report vis-à-vis eFile & Serve?

A. The product names aren't specifically called out in the report, so it is difficult to determine whether it truly is part of that report.

Q. Okay. Do the Idaho Courts have any reason to believe that eFile & Serve is not covered by the SOC 2 report?

A. eFile & Serve is specifically called out. The Press Review Tool is not. Similarly, to jury management, it was -- it was not called out in the press -- in the SOC 2.

Q. Okay. Let me just take a quick moment to direct your attention over to Exhibit No. 10.

I have that up on the screen. Let me see if you see it.

A. Yes.

Q. So starting with this first sentence here, we

Q. Had the Idaho Courts previously requested or received a SOC 2 audit from Tyler?

A. Not that I'm aware of; not before I arrived.

Q. And did this SOC 2 audit satisfy the Idaho Courts' requirements for this type of audit?

A. No, because it's -- it's just one part of our requirements.

Q. Okay. And then what were the other requirements?

A. So what -- which product are you talking

Q. Well, I guess that's the question. Is there a standard set of requirements that the court requires, or is it on a -- on a per-product basis? A. We have -- the standards are detailed in the

cloud-based vendor's terms and conditions, so the SOC 2 report is to assess the data center in which the data is housed. And then in addition to that, we have an additional questionnaire that we ask that's based on configuration, audit logging, organizational security standards, that type of thing. So it is a standard process, but, again, since this is not a contracted product that we purchased, I've -- I've not gone through that process with Tyler Press Review Tool.

Q. Okay. And the same would be true with respect

18 (Pages 69 to 72)

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30(b)(6) Jennifer Dvorak

Page 73 Page 75 1 to Tyler eFile & Serve? vendors in the past to provide that, and, in fact, they A. Because that is already under contract, 2 have provided that same letter to other states. So it 3 3 was surprising that they said, "I will not provide you correct. Q. Okay. And did Tyler provide that additional 4 4 that letter." 5 information from exhibit -- I guess the terms and Q. So I think I asked if they did provide the 6 6 conditions in connection with the jury manager? letter, would it affect the risk analysis, and you said 7 7 A. They did not because the contract was already 8 My follow-up question there is: Why not? 8 signed. 9 9 Q. Mm-hmm. A. Well, I think that it would've -- because, 10 10 A. And regardless, they wouldn't have -- I'll again, we don't have a full picture of the environment, 11 just add that they wouldn't have met the requirements 11 I don't think that it would've changed the -- the -- the 12 because the jury manager is not included in their SOC 2 12 likelihood or the impact. It's just additional 13 13 information that could inform the risk, but it's -- the 14 Q. But the Idaho Courts are currently using jury 14 actual impact assessment, it would not have affected. 15 manager; correct? 15 Q. I believe one of the issues is, per your 16 A. Correct. 16 sentence here, you state you're looking for a 17 Q. So going back here to our Exhibit No. 11, I 17 certification that, you know, Tyler is a customer in 18 guess the next sentence is: "Tyler has -- however, 18 good standing and which AWS environment will be storing, 19 Tyler has stated that they will not provide a customer 19 processing, and transmitting ISC data. 20 attestation letter from their underlying laaS provider, 20 So we -- earlier, we talked about AWS 21 AWS, indicating they are a customer in good standing and GovCloud. If the Idaho Courts' data is stored, 21 22 which AWS environment will be storing, processing, and 22 processed, and transmitted in AWS GovCloud, and that's 23 transmitting ISC data." 23 confirmed through a certification letter, are you saying 24 And, again, I just want to understand why did 24 that would not be relevant to the risk analysis? 25 you put that sentence into this report? 25 MS. DUKE: And I'll object as to the form Page 74 Page 76 1 A. Because, again, that's a part of our 1 with you calling it Idaho documents in that setting, 2 2 requirements for cloud-based vendors. And we talked Idaho Court documents. 3 3 about that earlier, in my email, that I did ask for that Go ahead. 4 specifically. They said they would not be providing it, 4 THE DEPONENT: Yeah. I guess it would 5 and I also reminded Tyler that we would be asking that 5 make a difference in this risk assessment. 6 as part of a contracted service. 6 Q. (By Mr. Fetterly) And how would that make a 7 7 Additionally, this is not something that is difference? 8 out of bounds with asking for -- asking a vendor for. 8 A. I think that it would put us in a more 9 It's part of the standard process that I utilized in 9 comfortable position that Tyler Technologies could be 10 Arizona. 10 transparent about where our data's being stored and, 11 Q. So if -- if Tyler were to provide that 11 hopefully, it's attached to a contract process so that 12 letter -- well, strike that. 12 the data cannot be moved or -- or changed without our 13 So if Tyler provided that letter, how would 13 permission or input. 14 that affect this risk analysis? 14 Q. So is the issue then the quality of the 15 A. It would not have affected the risk analysis. 15 security provided by the laaS, or is it more the contractual accountability vis-à-vis, you know, the 16 It's just information about the product that was 16 17 17 gathered. It should be noted as part of the risk contract process? 18 analysis. 18 MS. DUKE: Object to the form. 19 So, again, I'm just trying to -- to assess the 19 THE DEPONENT: Yeah, I would say it's 20 20 risk based on the information provided. For me, that -both. Q. (By Mr. Fetterly) Okay. So as to the quality 2.1 that would be -- it's -- it -- it's a little bit -- I 2.1 of the security, if the -- if the -- if the data at 2.2 was surprised that they wouldn't provide that. They 2.2 23 specifically said that they would not provide that 23 issue is being hosted or stored or transmitted through 24 information. They -- they provided it to us for jury 24 AWS GovCloud, are there any issues there that give rise 25 25 to -- that create any concerns with the Idaho Courts? management when hosted in Rackspace. I've asked other

19 (Pages 73 to 76)

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that.

attestation letter itself?

vendor's behalf.

Q. (By Mr. Fetterly) Okay. Have the -- has the

administrative office contacted AWS to request this

cannot ask AWS to provide information on another

A. No, because we are not a vendor of AWS. We

Q. Okay. Have the Idaho Courts requested this

30(b)(6) Jennifer Dvorak

Page 77 Page 79 1 A. Not with the AWS GovCloud, but, you know, that 1 type of certification letter in connection with other 2 is just where the data is stored and housed. That 2 services through other laaS providers? 3 3 MS. DUKE: Again, beyond the scope, but doesn't take into consideration any configuration 4 maintained by the vendor on top of that cloud provider. 4 go ahead. 5 Q. Understood. 5 THE DEPONENT: Yes. 6 So now -- okay. So what about -- so then the 6 Q. (By Mr. Fetterly) So my understanding is even 7 if Tyler were to provide this letter, that doesn't contract process, how does the contract process factor 7 8 in to provide the assurances to address these concerns 8 necessarily address all of the Idaho Courts' concerns, 9 and how would that affect the risk analysis? 9 because the Idaho Courts are still seeking full 10 MS. DUKE: Go ahead. 10 compliance with the terms and conditions reflected in Exhibit 19: is that correct? 11 THE DEPONENT: So I -- I don't know how 11 12 it would affect the risk analysis, but it is -- it's 12 A. Yes. 13 just part of the contract process. So we do ask for a 13 Q. Okay. And that would be on a -- on a 14 letter from any third-party providers, and we do ask to 14 going-forward basis for future contracted services; 15 be part of the process or at least be notified of when 15 correct? 16 there's a change to that provider. 16 A. That's correct. 17 Q. (By Mr. Fetterly) Okay. Do you know whether 17 Q. And -- okay. But, currently, Exhibit 19 is 18 AWS provides such attestation letters to customers? not part of any current contract with Tyler in 18 connection with eFile & Serve or Portal; correct? 19 A. Absolutely. 19 Q. Okay. Is it common practice for AWS to 20 20 A. Correct. 21 provide this type of attestation letter? 21 MR. FETTERLY: All right. I think we've 22 A. Yes, it is. 22 been going for about another hour. Why don't we go off Q. Okay. And how would that look in this case? 23 23 the record, and shall we take another 10-minute break? Would it be something that would be provided directly to 2.4 MS. DUKE: Sounds great. 24 25 the Idaho administrative office? Would it be provided 25 THE DEPONENT: Sure. Page 78 Page 80 1 to Tyler? You know, how would that -- how would that 1 MR. FETTERLY: Thank you. 2 2 work here? (A break was taken from 3 3 1:58 p.m. to 2:14 p.m.) A. So, typically, we would ask Tyler to initiate 4 4 that conversation with their vendor because we don't MS. DUKE: Excellent. We were talking 5 5 have a relationship with AWS, and they would either off the record and we've addressed needing to have a 6 6 provide it on AWS letterhead directly to us or to Tyler protective order entered by the court. We'll put 7 7 so that Tyler could provide it to us. Either way would together a form that Mr. Fetterly and Ms. Keating can 8 8 take a look at and ultimately come to an agreement on work. 9 Q. Okay. Does the current contract between the 9 the protective order related to certain information administrative office and Tyler allow the administrative 10 10 that's been testified today and probably will be 11 office to, you know, request this type of certification 11 testified to in other depositions, which includes, but 12 letter or attestation letter? 12 is not limited to, the location of the Court's computer 13 MS. DUKE: Object to the form. 13 backup data systems, the housing of them, the security 14 Foundation. 14 surrounding them, and the security related to those like 15 THE DEPONENT: I don't know that it's 15 Tyler and others who are contracting with the State 16 16 related to certain information and documents. built into the current contract. I would believe it's 17 not. But in future contracts, it should be part of 17 And we'll get a form to you, Jon and

20 (Pages 77 to 80)

Katherine, to take a look at, and it'll be a standard --

There's no need for that, but it's my understanding that

MR. FETTERLY: That is correct. Nothing

I'm fine with it not being an "attorney's eyes only."

your client, my client all understand this on today's

Zoom, and this will be handled through a protective

order with the Court.

further to add at this time.

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Did I read that correctly?

A. Yeah. Yes.

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30(b)(6) Jennifer Dvorak

Page 81 Page 83 1 MS. DUKE: Thank you. 1 Q. So let's break that up and better understand 2 Q. (By Mr. Fetterly) All right. So, Ms. Dvorak, it. So, first, what -- what is the basis for this 2 before we took our break, we were discussing 3 3 statement? Exhibit No. 11, and we were specifically working through 4 4 A. So my understanding is that when you submit 5 the first page of the risk memorandum. 5 documents through eFile & Serve, publicly-identifiable 6 Moving now to the bottom paragraph, there's a 6 information such as first name, last name, social 7 bolded header called "Risk statement." Do you see that? 7 security number, those could potentially not be redacted 8 8 on a document and those would be made available in a Q. And did you draft this paragraph as part of 9 9 Press Review Tool for the public to review. So those your preparation of this memorandum? 10 10 data types would not be considered public or 11 A. Yes. 11 public-facing, but they could be made public-facing if 12 Q. Okay. As part of your risk review, did you 12 they were not redacted. 13 identify any risks that are not reflected in this risk 13 Additionally, if there was a misconfiguration 14 statement? 14 on the AOC side, in which we accidentally made data 15 A. It pretty well encompasses. Especially 15 types that we didn't want to be made publicly -- made 16 because it specifically calls out the contractual 16 publicly-available because there's no human interaction obligation to protect ISC data and provide indemnity in 17 17 with that automation, it would just -- the 18 the case of a data breach, so I think it is pretty misconfiguration would automatically push potentially 18 19 encompassing. 19 nonpublic information to the press review tool. Q. Okay. Let me just focus then on that part 20 Q. Understood. 20 21 before we walk through the statement. Why do you single Okay. So I'm going to break that up a little 21 bit further to make sure I properly understand it. So 22 that aspect out as being noteworthy? 22 23 A. Because that relies on us completing our 23 the first part of that sentence where it talks about sensitive data types, you're referring to data that the 2.4 cloud-based terms and conditions. 24 25 Q. Understood. 25 Idaho Courts believe should have been redacted in a --Page 82 Page 84 1 So if I understand you correctly, the -- the 1 in a document; correct? 2 execution of a contract that incorporates those terms A. Yes. 3 3 and conditions, that would be -- you would deem that Q. Okay. So this -- and so we're talking about a 4 then sufficient to address the risk concerns? 4 document that might otherwise be publicly available or 5 5 A. Yes. Because part of our process is to look nonconfidential, but contains sensitive information that 6 should be redacted; is that correct? 6 through all of the risk concerns, and then we have the 7 7 ability to reject issuing a PO if its security A. Yes. 8 requirements are not met. 8 Q. Okay. And so that's for sensitive data types. 9 Q. And help me understand that. You say "ability 9 But then for potential for misconfiguration, if I 10 to reject a PO," what does that mean? 10 understand you correctly, you're referring to a 11 A. So we would have -- we would not have to move 11 misconfiguration that results in nonpublic or forward with completing the contract and completing the 12 12 confidential documents going into a Press Review Tool; 13 13 is that correct? 14 Q. How would that apply to a product or service 14 A. Correct, because there's no -- there's no 15 that is already under contract? 15 humans looking at it. It's completely automated, so it 16 A. It would not, because this is part of a -- a 16 could potentially just pass right over to that Press 17 new contract or contract amendment process. 17 Review Tool to be viewed by the public without anyone 18 Q. Okay. Let me go with the -- direct your 18 reviewing it. 19 attention to the first sentence of that paragraph under 19 Q. And what, I guess, I want to -- I want to 20 "Risk statement." 20 understand what you mean when you say no one's reviewing 21 "The PRT can contain sensitive data types and 21 it. Are you talking about human review of the 22 there is the potential for misconfiguration to expose 22 configuration, or human review of the document once the 23 nonpublic data." 23 system has been configured?

21 (Pages 81 to 84)

A. Human review of the document once the system's

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been configured.

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types used select, document types used select, security

groups which could encompass multiple case types and

document types. So there could be parent-child

30(b)(6) Jennifer Dvorak

Page 85 Page 87 1 Q. Okay. So I'd like to set that aside now and 1 relationships within the security groups that encompass 2 just focus on the configuration. 2 multiple case types and document types, that, again, we 3 3 So how would the Press Review Tool be may not -- we may not know until they're published in 4 4 misconfigured in a manner that would expose nonpublic the Press Review Tool. 5 Q. (By Mr. Fetterly) So if we -- if we assume that data? 6 A. Well, my understanding is that the Press 6 there is a nonconfidential or public case type and 7 7 Review Tool configuration is based on case types, document type, and only that case type and document type 8 document types, security groups. There's multiple 8 is made available through the press tool, and -- and 9 it's configured correctly to operate that way, would 9 different ways that it can be configured so that you 10 that address the Court's concerns? 10 understand what will be pushed to the press review tool. If we or the vendor don't understand the implications of 11 11 MS. DUKE: Again, object to the form. 12 what we're configuring or we make a mistake, that 12 Also, calls for speculation. Foundation. 13 automation will push documents that we don't intend to 13 THE DEPONENT: Yeah, and I don't know. 14 be pushed to the Press Review Tool. 14 I -- my understanding is that it would rely on not only 15 Q. Okay. So that seems to be based on a 15 a perfect configuration of the system, it would also 16 hypothetical about if you don't understand or if you 16 rely on a perfect submission by the submitter of the 17 misconfigure. 17 documents. So they would also need to understand the 18 If we assume that Tyler and the Idaho Courts 18 file types, the case types, the document types, and so 19 have a clear understanding of the types of documents to 19 on and so forth, that they're selecting. So there's --20 be put into the press tool, and it's configured 20 there's a lot of room for error or unknowns. 21 correctly so that only public documents are made 21 Q. (By Mr. Fetterly) Okay. Did the Idaho Courts available, would that address the Idaho Courts' concern? 22 22 discuss with Tyler any scenarios where Press Review 23 A. Well, I think we'd have to think through every 23 Tools at other courts who used them were misconfigured? 2.4 scenario in which documents or case types could be 24 MS. DUKE: Same objections. 25 potentially submitted. We may not know what all of 25 Go ahead. Page 86 Page 88 1 those potential use cases or -- could entail. 1 THE DEPONENT: Yeah, I'm not aware of 2 2 Q. Do you have an understanding of whether the -that. 3 3 the press review tool as a default places documents into Q. (By Mr. Fetterly) Did the Idaho Courts discuss 4 4 the press tool or whether the default is to exclude them with any other state courts directly any experiences 5 5 from the press tool? with misconfiguration of their Press Review Tools? 6 6 A. I think that it's -- again, it's based on the MS. DUKE: Same objections. Also, beyond 7 7 configuration, and it would be an allow -- allow open, the scope. 8 THE DEPONENT: Yeah. I'm not -- I'm not 8 allow move to the press review tool. 9 9 Q. I'm not sure I understand that response. So aware of that. 10 10 is --Q. (By Mr. Fetterly) Are the Idaho Courts aware of 11 A. Maybe I didn't understand your question. 11 any specific examples of misconfiguration of press 12 Q. Fair enough. I appreciate you pointing that 12 review tools, or is this concern based on a -- a 13 13 hypothetical risk? out. MS. DUKE: Beyond the scope. Same 14 Do -- do you have an understanding of whether 14 the Press Review Tool operates such that the Idaho 15 15 objections. 16 THE DEPONENT: Yeah, I'm not aware of Courts select which documents to exclude from it or does 16 the -- do the Idaho Courts, would they identify which 17 17 18 Q. (By Mr. Fetterly) Let me quickly switch to a --18 courts to be allowed into it? 19 a different document. Bear with me. 19 MS. DUKE: Object to the form. 20 (Pause in the proceedings.) 20 Go ahead. 21 Q. (By Mr. Fetterly) I think this would be THE DEPONENT: Yeah. I think that it is 2.1 22 Exhibit No. 8. Can you please go to that document? kind of an either/or thing because it is based on case 2.2

22 (Pages 85 to 88)

Q. Okay. So this Exhibit No. 8, do you recognize

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this document?

30(b)(6) Jennifer Dvorak

Page 89 Page 91 1 A. Yes. 1 operating correctly, the issue then would be filer Q. And what is it? 2 submission or filer error; is that correct? 2 3 3 A. This was an email from Jessi following our MS. DUKE: Object to the form. meeting about the Press Review Tool. 4 4 THE DEPONENT: Potentially, yes. 5 Q. Okay. And so this email is a cover email and 5 Q. (By Mr. Fetterly) Any other issues once -- if it makes reference to a deck. So if we turn the page, 6 we assume that the system is configured and operating 6 7 7 there's now a slide deck beginning with SO 5035. Do you correctly? 8 8 MS. DUKE: Same objections. 9 9 A. Yes. THE DEPONENT: I believe that the -- the 10 10 Q. And have you seen this document before? other question we asked in regards to the documents is 11 11 whether or not the original is shared with the Press 12 Q. And did you consider this document when 12 Review Tool, so that would be another concern. Original 13 conducting your risk analysis? 13 document shared to the public without understanding if 14 A. Yes. 14 there are audit trails, anomalous behavior detection, 15 Q. Okay. And we're talking about the issue of 15 any type of -- any way to verify the integrity of the 16 configuration. Let me turn your attention to the 16 document, so that would be another concern. 17 document with, I guess, the Page SO 5037. Do you see 17 Q. (By Mr. Fetterly) Okay. You'll have to help me 18 that? 18 understand -- well, what do you mean by that in terms of 19 19 the integrity of the document? How does that relate to the issue of the original document that you just 20 Q. Excuse me. This is the wrong page. 20 21 Here we go, 5042. If you could please turn to 21 referenced? 22 that page. 22 A. Well, you asked me if there were any other 23 A. Yes. 23 security concerns. Q. So I just want to be clear as we're talking Q. Oh, my question was more narrow, tied to 2.4 2.4 25 about the issue of configuration, is this the 25 configuration. So if we assume that the system is Page 90 Page 92 1 configuration to which you are referring where it states configured correctly and operating correctly, then you records can be made available based upon case type identified, you know, the submission being one issue. 2 2 And so does this other issue in terms of the original, 3 codes, number of days, filing states or statuses, 3 does that also apply here with respect to if we assume 4 security groups and document types? 4 5 it's configured correctly? 5 A. Yeah, also on 5044. A. If it's configured correctly, and the 6 6 Q. Excellent. 7 7 Okay. So if I -- if I understand your submission is perfect --8 MS. DUKE: Same objections. 8 testimony correctly, the issue with potential for 9 9 misconfiguration would be that it could be configured in Go ahead. 10 a way where, for instance, documents of a certain case, 10 THE DEPONENT: Yeah. There would still 11 type code, or security group would be allowed into the 11 be the issue with an original document in the hands of 12 Press Review Tool because it was not configured 12 the public that potentially could be pulled into our 13 correctly. Do I understand that correctly? 13 case management system. 14 A. Yes. 14 Q. (By Mr. Fetterly) Help me understand what 15 15 the -- what the issue or concern there is. Can you Q. Okay. And assuming that the Press Review Tool elaborate? is configured correctly so only certain case type codes 16 16 17 A. Because we don't understand the security 17 or security groups are allowed in, do I understand correctly that still would not necessarily address the 18 controls in place on the Tyler side, we don't know if 18 19 there is auditability of who is accessing the document, 19 Court's concerns? 20 if the document's integrity is intact, so if there's 20 A. Well, I believe it still relies upon a perfect 21 been any kind of manipulation or changes prior to being submission by the person submitting the documents and 2.1 moved into the case management system. 22 2.2 Q. Did -- did anything you review or consider in 23 23 Q. So if -- so if the system is configured preparing this analysis lead you to conclude that 24 24 correctly and only the case type codes or security someone using the press tool would have the ability to 25 25 groups are allowed in, and that's performed and it's

23 (Pages 89 to 92)

once again, and this is Tyler emailing you; is that

Q. Okay. So the first sentence says: "First,

there is access control to the PRT, Press Review Tool,

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correct?

A. Yes.

30(b)(6) Jennifer Dvorak

Page 93 Page 95 1 manipulate a document in the --1 which is governed by our identity provider system. This 2 2 system ensures that only users who are granted the A. So --Q. -- e-file manager before it --3 correct role are able to log in and view the data in the 3 PRT." 4 A. Oh, I'm sorry. 4 5 5 Did I read that correctly? (Stenographer requests clarification.) Q. (By Mr. Fetterly) -- before it migrates into 6 6 A. That is correct. 7 7 the case management system? Q. So does this address the issue of kind of 8 8 public-facing control or audit control that would allow A. So that was a question that I asked after the 9 risk memorandum was issued about the original document. 9 Tyler or the court to monitor and audit who has access 10 10 Q. Was that question answered? to or entry into the Press Review Tool? 11 A. Yes. Well, it was -- it was just stated that 11 A. Well, currently, I don't know how we would vet 12 12 it was the original document. But because I don't have who has access to or the ability to log in to view the 13 any additional information on security controls in the 13 Press Review Tool. 14 system, I don't understand how the integrity of the 14 As far as I know, we would have to identify 15 document is verified. I did ask for dataflow and 15 who has access or we would have to allow access to 16 architecture diagrams that were never provided that 16 everyone. 17 would at least give me an understanding of the security 17 Q. Does the -- does the first sentence -- so 18 layers that are embedded on the back end of the system. 18 these first two sentences, do they not address how the 19 Q. So just so we have a common understanding, if 19 Press Review Tool allow -- you know, addresses which 20 you could go to Exhibit No. 12. 20 users are granted access based on their role? Is there 21 A. Yes. 21 something more that you would need to know that? 22 Q. I have it up on the screen. 22 A. Well, I don't know who potentially would be 23 Is this the -- is this the question and answer 23 identified as the press in Idaho. So who would we -- I 2.4 to which you just referred that occurred after the risk don't know who we would give access to. 2.4 25 analysis? 25 Q. Well, that's a -- that's a separate question. Page 94 Page 96 1 A. Yes. 1 I guess I'm just asking about in terms of being able to 2 Q. Okay. And is there anything here in this 2 audit who is going into the system, that's what you were 3 response that allows you to conclude that there's a risk 3 speaking to, and does -- do these first two sentences 4 of documents in the Press Review Tool being manipulated 4 not address that concern about the court or Tyler being 5 or, you know, that would allow for manipulation of 5 able to audit who is accessing the system? 6 6 documents before they go into the case management A. If we knew who needed access and we provided a 7 7 log-in information to them and we were able to 8 A. Well, it's based on my previous knowledge of 8 understand -- and we had a whole process flow around who 9 the Press Review Tool. I know that the public is going 9 has access, who doesn't have access, whose access could 10 to have access to these documents and it is the same 10 be revoked, then yes, but we do not have a process for 11 document that is in the queue that the clerk will 11 that currently. 12 12 Q. So is the issue then -- it sounds like the review. 13 Q. Okay. Let me direct your attention to 13 issue is a lack of a process with the court as opposed 14 Exhibit No. 10. 14 to a functional shortcoming with the press review tool; 15 A. Yes. 15 is that correct? Q. And I would direct your attention to the MS. DUKE: Object to the form. On that 16 16 17 second full paragraph, multi-sentence paragraph, that 17 sole issue, her testimony stands, but that's a begins with "first, comma." Do you see that? misstatement of her testimony as to other issues with 18 18 19 A. Yes. 19 the Press Review Tool. 20 Q. And just to be clear, this is the August 16th 20 Q. (By Mr. Fetterly) On the issue of the ability

24 (Pages 93 to 96)

to audit or control who has access, my understanding is

process for determining who would have -- who the users

this sentence from -- or these two sentences from Tyler

address that issue and that, Ms. Dvorak, you've just

identified a separate issue regarding a lack of a

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Courthouse News Service v. Omundson

30(b)(6) Jennifer Dvorak

audit control. Is there anything more -- anything more

that is not captured by what we've already discussed?

A. Yeah. So there would be additional security

diagram or a dataflow diagram so I can understand how

those documents are checked for integrity prior to being

controls that I would've liked to see in an architecture

accepted into the case management system.

the file is created? So those are the types of

information I would've liked to have seen in an

architecture diagram. I also asked for a system

security plan. None of these were provided to me.

that lying at the heart of this is that they provided

A. No. I mean, these -- they certainly didn't

provide that. They did answer the questions that I

you know, documents or kind of the -- the workflow

diagrams, kind of the schematics of their system? Is

Q. I believe that Tyler provided you information

regarding how their system works in the emails that were

exchanged and the questions and answers. Is it correct

information, but they didn't provide kind of the backup,

So is there any type of file integrity

monitoring that Tyler Technologies is utilizing? Is

there any type of encryption on the documents, or are

they being validated against their original cache when

Page 99

Page 100

Page 97

1 would be; is that correct? 2

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- A. I believe so, yeah.
- Q. Okay. If we go on down further into that paragraph, we have "second." So the paragraph begins with a first and it's followed by: "Second, there is access control to the data itself. This is governed by configuration within the EFM which allows our partners to set the parameters by which this data is made available."

My understanding is that this relates to what we were just discussing in connection with the -- the brochure that Tyler provided the court. Is that your understanding as well?

- A. Yes. So, again, this would be based on no misconfigurations.
- Q. Correct. And we -- and we've discussed that, so that would be the configuration that we were talking about with respect to the fields on Exhibit No. 8.
 - A. Mm-hmm.
- Q. Correct?
- 21 A. Yes.
- 22 Q. Okay. Let's direct our attention back to
- 23 Exhibit No. 11. So we -- under the risk statement, 2.4 we've discussed the first sentence. We then have the
- 25 second sentence: "The solution should ensure the

Page 98

1 asked with minimal information. I don't -- I don't 2 know, and this is, again, why I said that the loss of

3 integrity, the likelihood was possible. I don't know 4 how they're protecting the integrity of the documents.

5 They haven't provided any indication of that. They just 6 said, "We're protecting it."

Q. So -- okay. So on this issue of integrity, I wanted to scroll down then further into Exhibit 11, because we have some questions and answers.

A. Mm-hmm.

that the issue here?

- Q. And my understanding is that these are questions that were posed by the Idaho Courts, that's the block bold. And the green texts were the responses provided by Idaho; is that correct?
 - A. The green was provided by Tyler, yes.
- Q. By Tyler, excuse me. I might have misspoke there.

So looking at this first answer and question, the question is: "We'd really like to understand how the data is transferred between environments, i.e., between filling and press review."

And by that question, are you meaning between eFile & Serve and the Press Review Tool? Is that -is that what is meant there?

MR. FETTERLY: I didn't hear the

confidentiality, integrity, and availability of data contained in the court filings."

So this sentence seems to be speaking not to a risk but to a solution. Do I understand that correctly?

A. No. I mean, it is -- it's certainly a risk. A lack of confidentiality, a lack of integrity, or a lack of availability of data would be considered a risk, so I'm stating that a solution should encompass those

Q. So if we were to break that up, I think we've covered confidentiality. Is there anything more to add on confidentiality here that we haven't already discussed?

A. No.

Q. So moving on to integrity, how would -- again, I think we've kind of touched on it, but I just want to be clear. In the context of this sentence, how would providing access to new complaints through the press review tool implicate the integrity of data contained in court filings?

A. How is the document's integrity ensured that it hasn't been tampered with? What security controls are in place to guarantee that?

Q. Okay. And I think we just talked about that in some respect with respect to the registered user

25 (Pages 97 to 100)

30(b)(6) Jennifer Dvorak

Page 101 Page 103 1 response. Did the reporter pick that up? 1 lot of room for miscommunication here. That's why I'm 2 THE STENOGRAPHER: No. 2 asking some of these questions trying to get to the 3 bottom of it so that I understand you. 3 THE DEPONENT: Yes. 4 So we're talking about the issue of integrity 4 Q. (By Mr. Fetterly) Thank you. 5 The answer Tyler provides is: "The press 5 of the document. And just to be clear, if I understand review tool is hosted alongside the eFiling Manager 6 your testimony, you would agree that it would be 6 7 7 and uses SQL queries to pull information in based upon relevant to your risk analysis if the -- if the document 8 how the Press Review Tool environment is configured." 8 made available in the Press Review Tool was a copy of So, again, configuration in this context, and 9 the original but not necessarily the original document 9 I think as we've been discussing it, means the settings 10 that's sitting in the EFM; is that correct? 10 that determine which documents or document types are 11 11 A. I think that it would be something to consider 12 allowed into the Press Review Tool. Is that your 12 as part of the conversation, yes. 13 understanding? 13 Q. Okay. And then --14 A. Yes. The SQL queries are not a security 14 A. And I'll just say, again, the risk memorandum 15 control. That's just a function. Typically, that's 15 was drafted based on the information that I had from 16 unencrypted traffic, so that's -- that was the basis of 16 Tyler at the time. 17 me asking for more information. 17 Q. Understood. 18 Q. Understood. Understood. 18 A. And that's -- that's all I -- that's all I had 19 And I guess what I'm trying to get at here is, 19 to go on. you know, would it be relevant to your risk analysis if 20 20 Q. Would -- if the Press Review Tool provides 21 the Press Review Tool is merely using SQL queries to 21 access to a copy of the original without any ability of pull information that provides copies of the original the user to manipulate or affect the file sitting in the 22 22 EFM, the eFile Manager, would that address the Court's 23 document, but it's not the original document itself? 23 concerns about the integrity of the file? 2.4 Would that be relevant to the risk analysis? 24 25 A. That would be relevant. And that's why I 25 MS. DUKE: Objection. Overstatement. Page 104 Page 102 1 asked if it was the original or if it was a copy, and I 1 Form. 2 2 was told that it was the original document. Go ahead. 3 3 Q. Understood. THE DEPONENT: Again, we'd have to And I guess what I'm -- that's what I'm trying 4 4 understand the security controls around how that would 5 to understand as well. I understand what they told you. 5 be made possible especially because it's in the same I'm just trying to understand, you know, in a -- you 6 6 environment. It's using the same database. We'd --7 7 would agree that with electronic documents, you can we'd really need to be clear on how that was -- that 8 have -- original document can mean different things. 8 solution was architected. 9 It's not like we're talking about a physical paper 9 Q. (By Mr. Fetterly) But if it is possible, and if 10 document where there can really only be one original 10 we assume that it's architected in a way where the 11 with, you know, copies of that original. Do you agree 11 original document in the EFM cannot be manipulated or 12 with that or disagree with that? 12 affected, would that address the Court's concerns about 13 A. I -- I don't think that I asked the question 13 integrity? 14 in a way to be misleading. 14 MS. DUKE: Same objections. Overbroad. 15 Q. I'm not suggesting --15 Form. 16 A. I did ask -- I did ask how the document was 16 THE DEPONENT: Yeah. It could 17 pulled into the Press Review Tool, which would've been 17 potentially address that, yes. 18 helpful to further explicate with a diagram. I Q. (By Mr. Fetterly) Okay. And you say 18 19 understand that sometimes using words to explain 19 "potentially." What more would there be --20 technology is not the best way to do it, so a diagram or 20 A. Because it's a hypothetical. It's a 21 a dataflow, how the data is flowing and which direction 2.1 hypothetical. 22 would have been really helpful. Q. Okay. 2.2 23 Q. Understood. 23 (Stenographer gives admonishment 24 And I wasn't suggesting you asked the question regarding crosstalk.) 24

26 (Pages 101 to 104)

THE DEPONENT: Sorry.

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in a way to be misleading. I agree with you there's a

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A. Well, there wasn't a lot of information -- or

detailed information provided in the question about:

30(b)(6) Jennifer Dvorak

Page 105 Page 107 1 Q. (By Mr. Fetterly) So moving on to 1 "What is the service's backup cadence? How are backups 2 availability -- actually, let me take a step back before 2 protected, confirmed, and tested on a regular cadence?" we move on to availability. 3 Q. Are you looking at one of the questions on 3 On the issue of integrity, did you have any 4 this document? 4 5 information -- well, strike that. Strike that. Let's 5 A. Yeah. It's actually on 5304, yeah. move on to availability. 6 6 Q. Thank you. 7 7 We're looking at -- let me go back to A. What is the service's backup cadence? 8 Exhibit 11. I'm going back up to the risk memorandum 8 Q. I see. So this is the question that relates 9 and specifically the risk statement. So we talked about 9 to your concern about availability as reflected on the confidentiality. We talked about integrity. 10 10 risk statement; correct? Availability of the data, I'm just curious. A. Correct. 11 11 12 It seems that the intended purpose of the Press Review 12 Q. And then Tyler provides its response, which 13 Tool is to provide access or make documents available, 13 neither one of us needs to read into the transcript. so I'm curious -- yeah, how availability factors into Did you consider this response sufficient or 14 14 the risk analysis and whether it's considered a positive 15 is there more information that you would've wanted in 15 16 or a negative factor. 16 order to, you know, assess availability? 17 A. So availability is one of the tenets of 17 A. I would've wanted more information. I mean, 18 cybersecurity in that the system that you're paying for 18 I -- I -- it's great that they're backing up the data, 19 and the system that the public relies on that you are 19 but how are they testing that? How are they proving providing is, in fact, available. It's not necessarily that the ability to recover from a disaster is taking 20 20 21 related to specific documents or specific information, 21 place? 22 but just that your system is up and running and 22 They just mention that it's considered highly 23 available as you intended and as you promised. 23 confidential and not shared with external parties. We Q. Understood. 2.4 24 have a nondisclosure agreement in place with Tyler, so I 25 So availability in this context is referring 25 don't know why they couldn't share that information with Page 106 Page 108 1 to is the system available; or, put differently, is the 1 us. system prone to crashing or failure or any other things 2 Q. Yeah. Would -- would this issue of 2 that would make it not available; is that correct? availability apply -- apply more broadly to all Tyler 3 3 4 products or systems, not just the Press Review Tool? 4 A. Exactly. Do we have to go back to our 5 5 constituents and tell them, "Hey, we know we promised MR. FETTERLY: Oh, her audio is dropping 6 you this cool tool, but now it's not available. It's 6 out. 7 7 down." THE STENOGRAPHER: Did they freeze? 8 Q. What information did you receive from Tyler or 8 MR. FETTERLY: Can we go off the record? 9 rely on, in preparing this, that addresses this issue of 9 (Off the record due to technical 10 availability? 10 difficulties.) MR. FETTERLY: I believe we had a 11 A. So we did ask about the backup cadence. I 11 12 think that was in one of my previous emails or even in 12 question pending before we had our technical difficulty. 13 the document. Maybe in 10? 13 Can you please read the question back? 14 Q. We'll go look at that right now, Number 10. 14 (Record read back as requested.) 15 A. I think it was actually 9. 15 MS. DUKE: Objection. Beyond the scope, Q. Are you referring to the green text? 16 16 but go ahead. 17 17 THE DEPONENT: Yeah. So this would apply A. Yeah. 18 Q. Responses to the questions? 18 to all -- all products that we contract in the cloud, but this question specific to the Press Review Tool. 19 19 A. Yes. Q. (By Mr. Fetterly) Has Tyler -- or, excuse me --20 Q. Just for the record, I believe that is an 20 attachment to the email that's marked as Exhibit 9. have the Idaho Courts had any issues with availability 21 21 as to the Tyler eFile & Serve product? 22 Those green answers are also attached to the risk 22 23 memorandum that we've marked as Exhibit No. 11. 23 A. I'd have to go back in and review. I mean,

27 (Pages 105 to 108)

nothing's 100 percent, so I'm sure they've had outages,

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but...

30(b)(6) Jennifer Dvorak

Page 111

Page 109

Q. I direct your attention, I guess, to 5303. The answer provided here is that the review tool is hosted alongside the eFiling Manager. And I know from some of the other documents that we've reviewed and statements from Tyler, the e-filing -- that the Press Review Tool seems to be part of or connected to the eFile Manager. Is that your understanding as well?

A. It is connected to, but it is -- it is a separate product. And it is a separate portal, so it's not something that you just turn on. There is additional -- additional work to stand it up. It's not just ready -- readily available.

Q. Understood.

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I guess where I'm going here is – I'm curious. Are these issues that we've discussed with respect to confidentiality, integrity, and availability relative to the press review tool, are those not equally implicated by eFile & Serve?

A. So if I had a -- an architecture diagram -- I know I keep going back to this, but if I had an architecture diagram or a dataflow diagram so that I could understand what data is central to EFM and what is independent, I could make that assessment.

Q. And can you help me understand, you know, why that information would be relevant to your ability to

I can only base my assessment based on what I've been told, and I've been told that there's one document. The public has access to it. I don't have any insight into what security controls protect that document such that it will not be altered; the integrity has been verified before it's moved to the case management system.

So I also think that the -- the eFile & Serve is such that only the filer -- only the person submitting the documents has access to those documents, and then only the clerk accesses those documents before they are moved into the case management tool. So there -- there's a chain of custody, so to speak, in that process. I don't have that same chain of custody potentially in Press Review Tool because it is open to the public.

Q. You would agree open to the public subject to the registration and kind of authorized user requirements that Tyler outlined in its emails; correct?

MS. DUKE: Well, object to the form.

Foundation. Speculation. I don't think Tyler defines anything for us.

THE DEPONENT: Yeah. It would depend on that configuration of how the log-in is -- is created. Is it -- is it a generic log-in? Is it a named log-in

Page 110

make that assessment?

A. So, like you said before, you know, asking --asking if it's the original copy of a document versus the copy of a document, there are implications for that. So I'm not able to assess if the Press Review Tool is completely on the same environment and would be completely tied into EFM, or are there separate components that if EFM were to go down, the Press Review Tool would still be available? I don't -- I don't understand that architecture because it's never been outlined to me.

Q. Understood.

And you just spoke to availability, and I guess my question was a little bit broader with respect to confidentiality, integrity, and availability. You know, all of these things we've just discussed with respect to Press Review Tool as reflected in your risk analysis, are those not also issues that would exist with respect to eFile & Serve?

A. They could, but I don't know that with certainty because I don't know -- I only know what information has been given to me. You know, there could be room for confusion, especially with regards to the original document versus it's just, you know, housed in the same database and it's a copy.

Page 112

associated with a specific user? None of that was defined.

Q. (By Mr. Fetterly) Did you specifically ask
Tyler about how that would work? Were there any
follow-up conversations in the email traffic that would
ask Tyler to specify nature of registered user and how
that process works?

A. I did not, but they did mention that it is part of their log-in, that they -- their identity provider that they currently use.

Q. Did you contact any other state courts that use the Press Review Tool to ask about their experience with, you know, providing registered users access to the press review tool?

28 (Pages 109 to 112)

30(b)(6) Jennifer Dvorak

Page 113 Page 115 1 So I don't know if -- I -- I don't understand the 1 Q. (By Mr. Fetterly) Are the Idaho Court -- is the 2 implications of their Identity Management System and how 2 Idaho Court aware of any examples of either of those 3 scenarios, those hypothetical scenarios, occurring at 3 that would affect the Press Review Tool. Q. Did -- any of the states that you spoke with, 4 any court that uses the Press Review Tool? 4 5 did any of these conversations involve the ability to 5 A. Not the Press Review Tool, no, but other Tyler log into Press Review Tools across --6 6 products. 7 Q. Aware of that with eFile & Serve? A. Not specifically, no, but my concern is that 7 8 it uses the same. This is new information that I just 8 A. Not with that product, but with another 9 9 received based on another conversation about the product. 10 iCourt Portal, in general, so I haven't been able to 10 Q. And what product is that? 11 get additional information about that. 11 A. The iCourt Portal, in general. 12 Q. Okay. But so if I'm -- just to be clear, you Q. And what is the iCourt Portal? 12 13 didn't speak to any courts about issues with accessing 13 A. That's the ability for public users to look up 14 other court's complaints or data through the Press 14 public court information. 15 Review Tool; correct? 15 Q. Okay. And does the iCourt Portal provide 16 A. I did not, no. 16 access to documents before or after they are accepted 17 Q. And is iCourt Portal a separate product than 17 into the court's case management system? eFile & Serve? 18 18 A. It only provides access to the case management A. It is a separate product, but I believe it 19 19 system, so cases that are already recorded. Q. Okay. So the iCourt Portal does not address 20 uses the same identity management. 20 21 Q. Okay. For -- strike that question. Hold on. access to the eFile Manager or access through a press 21 22 As we're talking about kind of these issues of 22 review tool; correct? 23 confidentiality, integrity, availability, I just want to 23 MS. DUKE: Object to the form. Go ahead. Q. (By Mr. Fetterly) The iCourt Portal -- let me 2.4 understand a few more issues that may or may not have 24 25 been relevant to your analysis. I know we've discussed 25 rephrase. Page 114 Page 116 1 configuration, but just to be clear, if we're talking 1 The iCourt Portal does not provide access to 2 2 about a document that is only a copy of the original and documents that are in the eFile & Serve system, the 3 3 the access is limited to only viewing or downloading, EFM, or the Press Review Tool; correct? 4 4 would that be relevant to your risk analysis? A. Correct, but the authentication is handled by 5 5 MS. DUKE: Objection. Speculation. Tyler Technologies; the authentication piece for all 6 6

Improper hypothetical. Assumes facts.

Go ahead.

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THE DEPONENT: Yeah. I don't know because it is hypothetical. That's not what was described to me as the solution.

Q. (By Mr. Fetterly) Okay. Do you have an understanding of how someone using the Press Review Tool could manipulate a document that's made available in the **Press Review Tool?**

MS. DUKE: Again, form and foundation, but go ahead.

THE DEPONENT: Yeah. Potentially, there could be an external-facing vulnerability that's exploited. There could be permissions that maybe are mishandled on the document that allows "write" instead of "read only." This would -- these are things that would potentially come up in a third-party pen test. I did ask for that as well, and I was told that those results are not shared with customers, nor do they provide a remediation schedule when findings are made. three of those products.

Q. You're talking about authentication, but those would be --

A. The identity permissions that they mentioned in this.

Q. Where do they mention that?

A. Let me -- sorry, we were just there. MS. DUKE: It might have been in an

email?

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THE DEPONENT: Yeah, it might have been in that one.

So on Exhibit 10, in the email from Jessi Fisher, it does state that access control to the PRT is governed by our identity provider system.

Q. (By Mr. Fetterly) Have the Idaho Courts had any problems or concerns with the Tyler identity provider system with respect to the Idaho products?

29 (Pages 113 to 116)

Page 117

Courthouse News Service v. Omundson

30(b)(6) Jennifer Dvorak

Q. My understanding is that your view is that the Idaho Courts' lack of -- lack the contractual power to require Tyler to provide information about eFile & Serve and the Press Review Tool. Is that -- is that consistent with your testimony today?

MS. DUKE: Object to the form.

Go ahead.

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THE DEPONENT: So that -- that is a bit consistent, but in -- in Exhibit 19, in the ISC terms and conditions for cloud-based services, on the last page, Page 7, we do have a statement for RFP and other processes to pre-assess multiple vendors. There is the separate ISC vendor security requirements to be completed.

I provided this document to Tyler
Technologies when we were speaking about the Enterprise
Jury Management and they refused to complete it. It's
just another security questionnaire. It asks very
high-level questions. It asks for technology diagrams
or if there's a system security plan. I did request
that as part of another product and they would not
complete it.

I've also asked it for another product that we're inquiring about called Tyler Supervision. We're assessing multiple -- multiple vendors for this

Page 119

MS. DUKE: Which ones --

MR. FETTERLY: The questions that

incorporate EFM. So --

MS. DUKE: Sorry, which one in

particular?

MR. FETTERLY: The testing and implementation and the security -- cybersecurity concerns with respect to the PRT. I believe all of the testimony here has linked the Press Review Tool to eFile & Serve, and so understanding the relationship between the two, I think, is very much within the scope of the topics.

MS. DUKE: I don't agree that they've linked them completely. Actually, that's part of the significant issue. But, regardless, my -- I have my objection and that's fine. It's noted.

Q. (By Mr. Fetterly) So I just want to understand. I asked about whether there's a concern with -- you know, whether the Idaho Courts have concerns about whether eFile & Serve is sufficiently secure, and I -- my understanding of your response is that you're referring to the contractual process and that there's an opportunity to amend and address these through the amendment process. So -- and that's not a question. I'm just trying to get past the objections.

Page 118

supervision and drug court product. All the vendors provided me with the questionnaire back. Tyler Technologies has not provided it to me.

Q. (By Mr. Fetterly) So that particular questionnaire, the Idaho Courts have not received it from Tyler in connection with any product; correct?

A. Correct.

Q. And this Exhibit 19, the terms and conditions, that has not been agreed to by Tyler with respect to any Tyler product; correct?

A. Correct.

Q. So -- so sitting here today, do you have concerns about whether File & Serve is sufficiently secure?

MS. DUKE: So I'll object to the form and I'll also say it's beyond the scope.

THE DEPONENT: So, again, we haven't had the ability to request it based on a contract amendment. So because Press Review Tool requires a contract amendment, that would've been our opportunity to do a security review on the -- on those products, especially if they're as connected as Tyler states.

MR. FETTERLY: And responding to Counsel's objection, I do believe this is within the scope of the topics we're talking about.

Page 120



30 (Pages 117 to 120)

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a Press Review Tool contract would be a basis for

concern: is that correct?

MS. DUKE: Same objections. Go ahead.

THE DEPONENT: Yeah. I mean, we -ideally, we would like these terms and conditions associated with all new cloud purchases or purchases that require contract amendment.

Q. (By Mr. Fetterly) And is it correct that the administrative office would not enter into a contract for the Press Review Tool without these terms and conditions?

MS. DUKE: And, again, legal conclusion. Beyond the scope. Probably more of a Sara question than a Jennifer question, so I'll instruct her not to answer.

Q. (By Mr. Fetterly) Okay. And in terms of the cybersecurity or other security risks, would you agree that any -- any risks arising from not having these

Page 123

Q. (By Mr. Fetterly) I -- I understand what you're saying. I'm speaking more in terms of the concerns that exist or do not exist, which I believe would exist notwithstanding the -- the contract process.

So I guess my question is: Do the concerns then go away if the contract process results in the adoption of these terms and conditions of Exhibit 19?

MS. DUKE: Again, same objections. Form. Foundation. Speculation.

Go ahead.

THE DEPONENT: Yeah, and it's a -- it's a completely different product. It's going to be the public that's accessing documents, the public that's accessing the original documents is what I've been told by Tyler; whereas, with just the EFM, just the File & Serve, the only folks that have access to that chain of the document are the person submitting the documents and the clerk who is reviewing and filing the documents. So it's a pretty closed-loop system.

So in addition to security concerns about the Press Review Tool, the confidentiality, integrity, and availability, it is more of a -- an open-loop process because the public is now available -- you know, can have access.

Q. (By Mr. Fetterly) Is it correct that the EFM

Page 122

terms and conditions in place would apply equally to both the Press Review Tool and eFile & Serve?

MS. DUKE: Again, form. Foundation. Speculation.

THE DEPONENT: Yeah. I think in order to make that conclusion, we'd have to, again, understand what -- what is -- what is -- what interlinking areas the EFM has with the Press Review Tool. And, again, that should be documented in an architecture or a dataflow diagram so we can understand what components are reliant upon that File & Serve product versus what is standalone, and I don't -- I don't know that.

Q. (By Mr. Fetterly) As it relates to cloud -cloud services or laaS providers, wouldn't the risk of not having these terms and conditions in place apply equally to both the Press Review Tool and eFile & Serve?

MS. DUKE: Again, same objections. Form. Foundation. Calls for speculation.

THE DEPONENT: Yeah. I mean, the risk exists for sure, but the things that we have immediate control over are purchases that are underway because we have the ability to negotiate a new contract. It's very difficult to negotiate an existing contract with a vendor.

Page 124

1 in -- within eFile & Serve receives all e-file 2 documents submitted to the Idaho Courts?

A. I believe so.

Q. Are you familiar with the different case types and filing codes or document types that are available to e-filers who use the Idaho Courts' e-filing system?

A. Not intimately because that's not --MS. DUKE: And that's not what she was disclosed for.

Q. (By Mr. Fetterly) Well, I understand, but I think that speaks to the issue of configuration.

In your analysis of the configuration issue or configuration risk, did you consider or evaluate the different types of filing types, case types, document types, that could be configured?

A. Oh, certainly. And, again, my understanding is that the security groups within the EFM could encompass multiple case and/or document types. So I think that that's where there could be some parent-child relationships that could have unintended consequences with an automated system exposing documents.

Q. Understood.

But the -- but the -- we're talking about those concerns about security, you would agree that the eFile & Serve system receives all e-file documents;

31 (Pages 121 to 124)

30(b)(6) Jennifer Dvorak

	Page 125		Page 127
1	correct?	1	Beyond the scope, and I'll instruct her not to answer.
2	MS. DUKE: And, again, objection.	2	Q. (By Mr. Fetterly) Okay. Let's go back to our
3	Foundation, to the extent it's beyond her knowledge.	3	Exhibit No. 11, the memo.
4	THE DEPONENT: Yeah, I believe so.	4	At the top of Page 2, we see a section called
5	Q. (By Mr. Fetterly) Okay. And so okay. And	5	"Risk acceptance options." Do you see that?
6	we've established that the eFile & Serve's contract	6	A. Yes.
7	does not incorporate or include these terms and	7	Q. What does "risk acceptance option" mean?
8	conditions that are Exhibit 19; correct?	8	A. It's our potential options that I outlined
9	MS. DUKE: Asked and answered.	9	that the executives could choose to accept or not accept
10	THE DEPONENT: I don't believe so because	10	to move forward with this product.
11	it's a completely new process.	11	Q. Okay.
12	Q. (By Mr. Fetterly) Okay. So then we talk about	12	A. So this is a way so that technology or
13	the Press Review Tool, and that would be a separate	13	technologists are not accepting risk on behalf of the
14	product for which the Idaho Court would require a	14	organization.
15	separate contract; correct?	15	Q. Understood.
16	A. I believe that in the documents in the	16	So I guess from from your point of view,
17	email documents, Tyler did state that it would require a	17	and I am acknowledging what you said about from a
18	contract amendment.	18	from a from your point of view and from your purview,
19	Q. Okay. Are those contract discussions	19	not what the executives might decide, but at least from
20	underway?	20	your point of view, these two options would present
21	MS. DUKE: Again, I'll object to the	21	forward paths for implementing a Press Review Tool; is
22	extent it's outside your scope or foundation.	22	that correct?
23	You can answer from your personal	23	MS. DUKE: Object to the form.
24	knowledge if you know.	24	Go ahead.
25	THE DEPONENT: I don't know.	25	THE DEPONENT: Yes, potentially. These
	Page 126		Page 128
1	Q. (By Mr. Fetterly) Okay. Have you reviewed any	1	are these are the options that that I could
2	draft contracts with respect to the Press Review Tool?	2	that I could see and think through.
3	MS. DUKE: Same objections.	3	Q. (By Mr. Fetterly) So how does how does
4	THE DEPONENT: No, but that's not	4	Option No. 1 implement the Tyler Press Review Tool with
5	unusual.	5	a contract with a contract amendment? I won't read
6	Q. (By Mr. Fetterly) Yeah. Have you been asked to	6	the entire thing, but that's Option No. 1.
7	review any contracts for the Press Review Tool?	7	How does that option address the risks
8	MS. DUKE: Same objections.	8	identified in the risk statement?
9	THE DEPONENT: No, but again that's not	9	A. So it it helps us to clear up some of these
10	unusual.	10	items that were deemed possible because we didn't have
11	Q. (By Mr. Fetterly) Okay. I want to switch gears	11	additional information to make an adequate risk
12	here.	12	assessment.
13	Actually, before I do, I know we've talked	13	Q. Okay. And how does it do that?
14	about the eFile & Serve contract and how it's not	14	A. So it works through our baseline security
15	currently being amended. But if I understand you	15	control questionnaire which asks questions such as the
16	correctly, when it is amended, you will want to address	16	security posture of the vendor; the controls in place
17	the terms and conditions that are part of Exhibit 19; is	17	for the tool that would help us to understand if there
18	that correct?	18	are any additional risks that we didn't see by not
19	A. That's correct.	19	having this information.
20	Q. So has the administrative office taken any	20	Q. So it says: "Implement the Tyler press review
21	intermediate steps to address any potential risk or	21	tool with a contract amendment to include cloud provider
22	security concerns prior to the point in time when that	22	terms and conditions."
23	contract might be amended and these terms and conditions	23	So what specifically does that entail?
24	would be included? MS. DUKE: Again. Object to the form.	24 25	A. So that includes so that would have a contract amendment that would include the ISC terms and
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32 (Pages 125 to 128)

30(b)(6) Jennifer Dvorak

Page 129 Page 131 1 conditions for cloud-based services. And within that 1 MS. DUKE: Same objections. Asked and 2 2 document, it does require a baseline controls answered. 3 3 questionnaire be filled out. It also provides language THE DEPONENT: Yeah. It could address 4 for indemnification in -- in the case of a data breach, 4 some of the risks and it -- some of the potential risks, 5 and there are additional protections for ISC that are 5 but not all. 6 6 Q. (By Mr. Fetterly) But in your experience, this embedded in the terms and conditions for cloud-based 7 services. 7 contractual amendment and the other things you 8 Q. Okay. So in the absence of that contractual 8 identified would provide a path where you'd feel amendment and in the absence of the things you just 9 9 comfortable recommending an option should the executives spelled out, is it correct, then, that your view would 10 10 wish to accept it; is that correct? be the -- there is -- the risk is too -- too great to MS. DUKE: Again, same objections. Asked 11 11 12 accept the option, or maybe the risk isn't sufficiently 12 and answered multiple times. 13 addressed? 13 Go ahead and answer one more time. 14 A. I don't think I understand the question. 14 THE DEPONENT: It helps to reduce the 15 Q. It was a bad question. 15 16 A. Okay. 16 Q. (By Mr. Fetterly) Okay. So you would agree 17 Q. So in the absence of the contractual amendment 17 that the risk would be higher without the contractual 18 and the things you just identified, is it your testimony amendment and the things you've identified? 18 19 then that the -- the court should not move forward 19 A. Yes. because of the risk? 20 20 Q. Mm-hmm. And that would be true with any Tyler 21 A. I'm just providing options for the executives 21 product, not just the press review tool; correct? 22 to make a decision. So I didn't -- they're not ranked A. That would be true of any product. 22 23 in any way. These are just two potential options. They 23 Q. Okay. Same question for risk acceptance 2.4 could accept them or reject them. Option No. 2, how does that address the risks of 24 25 Q. I understand, but you were being asked to 25 confidentiality, integrity, and availability? Page 130 Page 132 1 provide an analysis on risk; correct? 1 A. So this could potentially provide a path that 2 A. Correct. 2 ISC could fully vet a Press Review Tool based on our 3 Q. And so Option No. 1 spells out one option for 3 security requirements with an understanding of what 4 addressing the risk; correct? 4 information could potentially pass to the solution. We 5 MS. DUKE: Objection. That's overbroad. 5 would also potentially have the ability to have our own 6 security controls so that we could -- we could have a 6 She's obviously talking about security issues. There's 7 7 plenty of other things that are outside her scope. full understanding of the confidentiality, integrity, 8 MR. FETTERLY: Understood. 8 and availability of that system. 9 Q. (By Mr. Fetterly) So within your scope of this 9 Q. So as I understand these options, Option No. 1 10 risk assessment or risk analysis, you've proposed an 10 is kind of just implementing the Tyler press review tool 11 Option No. 1 as a way to accept the risk; is that 11 as provided by Tyler. Option No. 2 would entail, you 12 correct? 12 know, an RFP or a third-party vendor implementing the 13 A. Potentially, yes. 13

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- Q. And when you say -- and I just want to understand what "risk acceptance" means. Are you using risk -- does Option No. 1 sufficiently address the risk in your view?
- A. It could, yes, but, again, there's -- no system is without -- without risk. You know, there's no such thing as zero percent risk, so this could be a potential option to reduce risk.
 - Q. Understood.

So your testimony is it would not eliminate potential risk, but it addresses or mitigates potential risk; is that correct?

- Press Review Tool using the Tyler -- I guess using the APIs for the Press Review Tool; is that correct?
 - A. If the API was available, yes, potentially.
- Q. Okay. As part of your risk analysis, did you consider the -- the feasibility of the Idaho Courts, or the administrative office building or implementing its own Press Review Tool using the API as opposed to, say, an RFP for a separate third-party vendor?
- A. We did discuss it, but because the API is not yet available, it -- we have no understanding of what -what capabilities would be available to us in order to build our own. So we just don't -- we don't have any information.

33 (Pages 129 to 132)

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Go ahead.

THE DEPONENT: Yeah. It was not

you access your public-facing web application.

Q. (By Mr. Fetterly) Are the kiosks --

considered because there is no difference between where

MS. DUKE: So, Jon, we've been going

30(b)(6) Jennifer Dvorak

Page 133 Page 135 1 Q. And as part of your risk analysis, did you 1 another chunk of time. Do you mind if we take a break analyze or consider the possibility of providing access 2 and then do you have kind of an estimate of how long 2 to a press review queue through the kiosks located at 3 3 you're going to go? 4 the courthouse? MR. FETTERLY: I think we're very -- off 4 5 MS. DUKE: Sorry. Can I have that 5 the record? 6 6 MS. DUKE: Yeah. question read back? 7 7 (Record read back as requested.) (Discussion off the record.) THE DEPONENT: I mean, I guess I don't 8 8 (A break was taken from 9 know what the difference would be. Because the court 9 3:43 p.m. to 3:50 p.m.) 10 Q. (By Mr. Fetterly) Okay. I'm going to go back 10 portal is a web application, I don't -- I don't to Exhibit No. 1 and just ask you to put that back in 11 understand what the difference would be if it's 11 front of you. This is our list of deposition topics. 12 available on a kiosk or if it's available -- because 12 13 it's available regardless to the public. It's -- it's a 13 I just want to recap very briefly, starting 14 public-facing web application. 14 with Number 15, we've discussed quite a few 15 Q. (By Mr. Fetterly) So -- so that wouldn't be a 15 communications between the AOC or the District Courts on 16 relevant factor in your analysis, if the Press Review 16 the one hand and Tyler on the other, many of which were 17 Tool could be made available at the courthouse versus 17 premarked as exhibits, most of which were discussed. being made available remotely online? 18 18 Are there any communications that were 19 MS. DUKE: And, again, object to the form 19 material or relevant to your risk analysis that we've -that we're not covered or not discussed so far today? 20 and foundation as to she's a security person. She's not 20 21 MS. DUKE: And the only thing I should a clerk. She's not a filer or any of that. 2.1 22 Go ahead. 22 say, Jon, is obviously she came in August of 2021, so if 23 THE DEPONENT: Yeah. Again, I -- a 23 she knew of anything prior to that that she considered, web-based application is available on the web whether 24 obviously, she can answer that. But you can ask the 24 25 it's in a courthouse on a kiosk or if it's available on 25 same question of Sara as well, of course, since she has Page 134 Page 136 1 your computer at home. The availability is still the knowledge pre-August 2021. 2 2 same. MR. FETTERLY: Sure. 3 3 Q. (By Mr. Fetterly) Was that possibility MS. DUKE: But go ahead. considered as part of your analysis, or is this the 4 4 THE DEPONENT: Yeah. As -- as far as the 5 first time you're thinking about that? 5 communications we've discussed, I mean, I think 6 6 MS. DUKE: And, again, same objections. that's -- that's about it. 7 7 Q. (By Mr. Fetterly) And do you have any knowledge Limited to your security analysis, you 8 8 of communications between the court and Tyler that can answer. 9 9 predate your joining the court in August of 2021? THE DEPONENT: Yeah. Just, again, a 10 web-based application is -- that was -- that was the 10 A. No. 11 only scope. And we have kiosks available and our web --11 Q. Okay. Actually, I skipped over Number 9. Let 12 our public-facing web application is available on that 12 me jump back up. 13 kiosk, so the form factor makes no difference to me. 13 Number 9 was the factual basis for the 14 Q. (By Mr. Fetterly) Okay. You didn't answer my 14 statement that Tyler Technologies' press review queue 15 question though. 15 presents potential cybersecurity risks as referenced in 16 The question was: As part of your risk 16 defendant's response to CNS's Interrogatory No. 1. 17 analysis, did you consider that possibility or did you 17 Is there anything additional to support the 18 not consider it? 18 factual basis for the statement referenced in Number 9 19 19 MS. DUKE: Same -- same objections. that we've not already discussed here today?

34 (Pages 133 to 136)

A. I think we've covered pretty -- pretty much

there's a lot of unknowns. We only have the ability to

aware of, that are included in the information that we

address the potential cybersecurity risks that we're

were given, so there's still outstanding questions

everything. You know, I -- I will just restate that

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yeah.

MR. FETTERLY: Okay. Thank you.

30(b)(6) Jennifer Dvorak

Page 137 Page 139 1 about, you know, potential vulnerabilities that could be 1 MS. DUKE: Yeah. We just figured 2 exploited in the Press Review Tool, the integrity of the 2 cybersecurity-wise, this was the person. There's --3 3 documents because they have been stated as the original, obviously, those all overlap, and then I think Sara will and just how any of those things could be mitigated. We 4 be able to adequately address the, you know, clerk, 4 5 5 don't -- we don't have any knowledge of how those things judge, trial administrator issues. 6 6 are mitigated. MR. FETTERLY: Got it. I appreciate 7 7 Q. Understood. that. 8 And so the deposition topic here was the 8 Q. (By Mr. Fetterly) So then looking at 16, 17, factual basis for a statement that's been provided in a 9 and 18, you know, from the cybersecurity point of view, 9 have we covered all of the, you know, information or written discovery request. And so have we covered 10 10 everything that goes into the factual basis for the kind of the bases that were relevant to your 11 11 12 statement there's potential cybersecurity risks 12 cybersecurity review and analysis? including -- you know, including unknowns? 13 13 A. Yeah, I believe so. 14 A. I believe so, yes. 14 Q. Were you asked to perform a security analysis 15 or a security review for the Tyler Auto-Accept tool? 15 Q. Okay. I'm now going back to our list. 16 Number 16, the ability of AOC or Tyler to implement a 16 A. No. 17 press review queue using APIs provided by Tyler 17 Q. Did you perform a security risk or review Technologies. 18 analysis of the Auto-Accept tool? 18 19 Is there anything more than what we've 19 A. No, I did not. discussed today that would be, you know, relevant or Q. Okay. 20 20 responsive to the ability of the AOC or Tyler to 21 21 A. And my understanding is that's not a separate implement a press review queue using APIs provided by 22 22 tool to be assessed. Is that correct? Tyler Technologies? 23 23 MS. DUKE: I think Sara's going be able 2.4 A. So we don't know that the API is even 24 to better handle the Auto-Accept side of things, but... Q. (By Mr. Fetterly) But what's the basis of your 25 available. It was supposed to be available at the end 25 Page 138 Page 140 1 of Q3, end of September. As far as I know, it's not --1 understanding? 2 2 there is no API available for this yet. A. That it's not a separate tool. It doesn't Q. Understood. 3 3 require contract amendment. So -- and I believe we did cover that. Any --4 4 Q. And -- and when I say what is the basis for any other reasons or issues concerning the ability of 5 5 that understanding, how or why do you believe that to be AOC or Tyler to implement a press queue using APIs? 6 6 the case? 7 7 MS. DUKE: Objection. Overbroad, but go A. I believe in that presentation deck that was 8 provided, I think -- I think that it states that it was ahead. 8 9 THE DEPONENT: Yeah. Just, you know, 9 already available functionality. 10 functionality and cost. Like, those are all things that 10 Q. So I just pulled up Exhibit No. 8. 11 have not been addressed. 11 A. Yeah. 12 MS. DUKE: And -- and, in all fairness, 12 Q. And is this the document you just referred to? 13 she's here from a security standpoint, so the clerks 13 14 would have plenty to say on that, as you know, from 14 Q. This sentence here on the left-hand side, 15 their -- their declarations as with people like which is Auto-Accept Review is a free, out-of-the-box 15 16 Judge Hippler. e-filing function? 16 17 MR. FETTERLY: Understood. A. Yes. 17 18 I guess, Keely, real quick then, just so 18 Q. Is that, at least in part, what you base your I understand it, since this witness is being produced 19 19 conclusion on --20 from the cybersecurity perspective, is it your view 20 A. Yes. 21 these Topics 16, 17, and 18 are still fair game topics Q. -- or your understanding on? 2.1 22 for Sara on Friday even though --A. Yup. 2.2 23 MS. DUKE: Yeah. From a different angle, 23 Q. Thank you.

35 (Pages 137 to 140)

We were discussing earlier communications with

other courts or dealings with other courts, whether

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30(b)(6) Jennifer Dvorak

Page 141 Page 143 1 there had been any, concerning, you know, other courts' 1 any way -- well, strike that. 2 2 With respect to Auto-Accept, if the court were press review queues. I believe at the outset of the 3 3 case -- outset of today, you were telling us that you to -- or if Auto-Accept were to be used in the state of previously worked for -- I think it was the State of 4 Idaho, are you providing any testimony based upon your 4 5 Arizona Department of Homeland Security; is that 5 understanding of any of the impacts that would or would 6 not have on the judges, court staff, clerks, et cetera? 6 correct? 7 7 A. Yup. A. No. 8 Q. We've talked about the case management system 8 Q. As part of your time with the Arizona 9 Department of Homeland Security, did you have any 9 and we've also talked about Tyler OFS system. 10 connection to the Arizona State Court's adoption of a 10 press review queue through the Granicus e-filing vendor? Q. Who runs and operates the Tyler OFS system? 11 11 12 A. No. I was on a -- they're a separate branch 12 A. Who -- who hosts it? 13 of government, so I was on the executive branch. 14 Q. Okay. So you had -- you had no insight into 15 or dealings with the Arizona Judicial Branch? 16 A. No. 17 Q. And, specifically, none with respect to their 18 implementation of a press review queue? 18 Q. Now, you've been involved in a procurement 19 19 process with Tyler related to other products, and fair 20 Q. Okay. I have no further questions. 20 to say, Tyler has not been forthcoming with a host of 21 different requests and security information that you've 21 22 EXAMINATION 22 asked them? 23 BY MS. DUKE 23 A. That's correct. Q. Okay. I think, just to be clear, you were Q. You've also mentioned that the way the 2.4 2.4 25 asked a number of questions with respect to Exhibit 11. 25 contract process works is that if you're under contract Page 142 Page 144 1 When you're answering those questions as to your 1 already, that's not built into the contract itself. 2 2 assessments and whatnot, are those limited to a security Has Tyler given any indication that it will 3 3 assessment, cybersecurity assessment? willingly just provide information related to its press 4 4 review queue whether it was in contract or not? 5 Q. And are you providing any testimony or 5 A. No. 6 knowledge based upon your understanding of how the use 6 Q. And if they were to provide information 7 of press review queue would impact the court clerks 7 related to the press review queue, could that also be 8 across the state of Idaho? 8 used to then assess the current contract that they don't 9 A. No, I have no understanding. 9 have an obligation under with respect to the OFS system? 10 Q. Are -- does any of your testimony include how 10 A. Yes, it could. Q. Without the information from Tyler, are you 11 implementing the press review queue would impact the 11 12 district judges or magistrate judges in the state of 12 able to report to the Idaho Supreme Court, who are your 13 Idaho? 13 executives in this case, that the press review queue 14 A. No. 14 would, in fact, be a program that could be used that 15 Q. And does any of your testimony have anything 15 from your standpoint was safe? 16 to do with how the press review queue would impact the A. There are certainly risks associated with 16 17 trial court administrators? 17 using this tool. 18 18 Q. And without knowing the information from A. No. 19 Q. Does any of your testimony include the costs 19 Tyler, are you able to have a complete understanding of 20 associated to the -- each individual judicial district what those risks are? 20 in the state of Idaho if press review queue was 21 2.1 A. No. 22 implemented? Q. Same with the API. The API sounds like 2.2 23 A. No. 23 Tyler's indicated it'd be ready by the end of September 24 Q. Same questions for Auto-Accept, I'll just lump or the third quarter of this year. And, at this point, 24 25 them all together. Any of your testimony, does that, in 25 the API sounds like it's not even available to look to.

36 (Pages 141 to 144)

30(b)(6) Jennifer Dvorak

Page 145 Page 147 1 A. I don't think that it's available. 1 **Supreme Court?** Q. And you've asked Tyler whether it has it 2 2 A. I was hired to be the Chief Information 3 3 available and what have they told you? Security Officer, to create a formal security program 4 A. I asked them as -- as most recently as last 4 that included risk management of vendors. 5 5 Q. And in performing that job, what's your week and I got no response. It's unknown. 6 6 Q. And given that, I'm assuming there's no way to understanding as to when you're talking about, for 7 7 estimate the costs or time it would take, the efforts instance, this risk assessment that you've been talking that would need to be taken by the Idaho Court System to about in -- that's Exhibit 11, and you talk about the 8 8 9 use Tyler's API, procure Tyler's API, and ultimately 9 risk acceptance options, what's it -- what's your 10 10 build something based on that API; is that correct? understanding as to, you know, what your charge is that A. That's correct. you're telling your executives who are the Idaho Supreme 11 11 12 Q. You were asked a question as to whether or not 12 Court? 13 you had specifically asked to see a demo of the press 13 A. So my job is to outline the risks that I 14 review queue. Do you recall that testimony? 14 found, attempt to quantify them and provide them with 15 15 options for moving forward to either accept the risks 16 Q. What have you asked Tyler to see related to 16 that I've discovered or to reject them and move on to a 17 the press review queue? 17 different product or a different offering. 18 18 Q. When you look at Item No. 1 on Page 2 of A. We asked for more information about it. We 19 let them know we were interested in investigating it 19 Exhibit 11 -- Exhibit 11. 20 further. We didn't use the word "demo," but we did ask 20 A. Oh, thank you. Sorry. 21 for more information, how does it work, what can you --21 Q. Yup. Page 2. 22 what can you tell us about it? 22 A. Page 2, got it. 23 Q. Do you find it odd that Tyler is not providing 23 Q. It talks about implementing the Tyler Press you and, therefore, Idaho Supreme Court with the Review Tool with a contract amendment. If you had that 2.4 2.4 25 security data that you've asked? 25 contract amendment, what steps would Tyler have to go Page 146 Page 148 1 1 through and what information would it have to provide to you so that you could then assess whether a contract 2 Q. And is that out of experience -- is that out 2 3 of the ordinary in your experience? 3 amendment would be recommended to the Idaho Supreme 4 4 5 Q. And do you have any idea at all why Tyler is 5 A. Well, they would first have to agree to the not being forthcoming with the data you've asked for 6 6 cloud provider terms and conditions. Additionally, they 7 related to the press review queue? 7 would have to complete a baseline security controls 8 A. I don't know, but it is -- I'm used to a 8 questionnaire and provide supporting documentation for 9 little bit of push back, a little bit of back and forth, 9 each of their answers to the questionnaire. 10 but just outright saying no or not providing any 10 Q. If they were to refuse to provide that 11 information is -- that's not what I've experienced in 11 information, and, you know, with respect to developing a 12 the past. 12 contract amendment, would you recommend a contract 13 Q. Given how Tyler is handling procurement-type 13 amendment? 14 questions related to the press review queue, how do you 14 A. I would not. 15 think they would respond to questions about their OFS 15 Q. And then Number 2 certainly is the wait for system that's currently under contract? Tyler Technologies application program interfacing 16 16 17 A. I think that they would respond similarly and 17 capability to become available. 18 that they would not be forthcoming in providing that 18 Again, this isn't available at this point as 19 19 far as you know it? information. 20 Q. Without the information that you've discussed A. Correct. 20 today in this deposition, are you able to recommend Q. And in order to consider whether that would, 2.1 2.1 whether the press review queue is, in fact, a safe in any way, be an option security-wise for the Idaho 2.2 2.2 23 system for consideration by the Idaho Supreme Court? 23 Supreme Court and the court systems across the state of 24 Idaho, what would you need from Tyler in order for you A. I'm not able to make that recommendation. 24 25 Q. What were you hired to do for the Idaho 25 to do your job as the Chief Information Security Officer

37 (Pages 145 to 148)

30(b)(6) Jennifer Dvorak

	Page 149		Page 151
1	for the Courts in recommending that they go with the	1	would be accepted.
2	API?	2	Q. But from a cybersecurity point of view, you
3	A. So the API becoming available would be the	3	would not be able to recommend the new contract without
4	first step. And then we would need additional	4	the additional information requested from Tyler?
5	information about what's what's contained within the	5	A. Correct. I would go through a similar risk
6	API, what functionality would be available to us to pull	6	memo process that we've already done.
7	from the file system, and what the costs would be	7	Q. Thank you. I have nothing further.
8	associated with that. And then we would have to	8	
9	potentially build our own portal for press review.	9	EXAMINATION
10	Q. Okay. Thank you.	10	BY MS. DUKE
11		11	Q. One quick follow-up on the question about
12	EXAMINATION	12	so you're not able to assess Odyssey File & Serve.
13	BY MR. FETTERLY	13	Explain again how Odyssey File & Serve is very different
14	Q. Just two follow-up questions.	14	from press review queue.
15	Without the information you've requested from	15	A. Well, it so Odyssey File & Serve is a
16	Tyler, are you able to assess the risk associated with	16	closed system in that only the the filer or the
17	the Odyssey File & Serve system?	17	submitter of documents has access and only the clerk.
18	A. No, I'm not.	18	So those documents are filed, accepted into the case
19	Q. And without the information requested from	19	management system, only those two parties have access to
20	Tyler, would you be able to recommend an amendment to	20	those documents.
21	the Odyssey File & Serve system when it is up for	21	In the Press Review Tool, those documents are
22	amendment?	22	open for public viewing, potentially public
23	A. So those those kind of go hand in hand. So	23	manipulation, before they are then moved to the case
24	if a contract amendment is required to move forward with	24	management system. And our understanding, based on the
25	a product purchase, then we would move forward with the	25	information provided by Tyler Technologies is they are,
	Page 150		Page 152
1	cloud-based terms and conditions and the baseline	1	in fact, the same document.
2	security controls questionnaire.	2	Q. Meaning the original?
3	Q. So without the information requested from	3	A. The original document.
4	Tyler, are you able to recommend an amendment to the	4	Q. Okay. Thank you.
5	Odyssey File & Serve system if an amendment is required	5	MR. FETTERLY: Nothing further.
6	to move forward?	6	(Deposition concluded at 4:13 p.m.)
7	A. I am not able to make a recommendation because	7	(Signature reserved.)
8	the the contract amendment is not underway, and it	8	000
9	hasn't the process hasn't been completed.	9	
10	Q. When the time comes to amend the contract, I	10	I
11 12	believe, assuming there's a termination date at some	11 12	I
	point in time, without the information requested from	13	
13 14	Tyler, would you be able to recommend to the Idaho Supreme Court that it proceed with entering into a new	14	
15	contract with Tyler?	15	
16	A. No. And, at that point, it becomes a	16	
17	procurement issue, and that's that's not necessarily	17	
18	a security issue. Security is just, again, identifying	18	I
19	the risk, helping to inform the folks that actually do	19	I
20	the contracts do the procurements.	20	I
21	So they would have to make the call of whether	21	I
22	or not by Tyler not completing this security	22	I
23	questionnaire or accepting the terms and conditions, the	23	I
24	executives would have to make the call of whether or not	24	I
25	the contract would be accepted, the contract amendment	25	I

38 (Pages 149 to 152)

30(b)(6) Jennifer Dvorak

	Page 153	
1	CERTIFICATE OF CERTIFIED SHORTHAND REPORTER	
2		
3	The undersigned Certified Shorthand Reporter and Deposition Notary Public of the State of	
4 5	California does hereby certify:	
	That he foregoing 30(b)(6) deposition of Idaho Court designee Jennifer Dvorak was taken before me	
6	remotely at the time, at which time the witness was duly sworn by me;	
7		
8	That he testimony of the witness and all objections made at the time of the deposition were	
9	recorded stenographically by me and were thereafter transcribed, said transcript being a true and correct copy	
	of he proceedings thereof.	
10	I further certify that I am neither counsel	
11	for nor related to any party to said action, nor in any way interested in the outcome thereof.	
12		
13	Further, that if the foregoing pertains to the original transcript of a deposition in a federal case,	
14	before completion of the proceedings, review of the transcript was requested.	
15	manoshp. maa roquaataa.	
16	In witness whereof, I have subscribed my	
17 18	name on this 9th day of November 2022	
19	A. FUR	
20 21	Nicole A. Bulldis, RPR	
22	CA CSR No. 14441	
23		
24 25		

39 (Page 153)

30(b)(6) Jennifer Dvorak

Page 154

T				
A	116:1,18 123:16	103:23 104:12,17	agreement 3:25 4:5	120:2,4 121:15
$\frac{\mathbf{a.m}}{\mathbf{a.m}}$ 71:2	123:24 133:2	115:20 119:23	15:22 33:11 50:3	125:18 128:5,21
	134:23 151:17,19	126:16,21 128:7	80:8 107:24	128:25 129:9,17
ability 7:6 11:25 12:24 13:2 30:10	accesses 111:11	130:16 131:3,24	ahead 14:22 16:2	131:7,18 140:3
	accessible 29:15	136:23 139:4	21:3 24:4,14 30:8	147:24,25 148:3
32:8 49:4 82:7,9	52:25 53:5	addressed 31:20	30:23 31:12 32:19	148:12,13 149:20
92:25 95:12 96:20	accessing 30:10	57:9 80:5 129:13	39:25 40:2,3	149:22,24 150:4,5
103:21 107:20	92:19 96:5 113:13	138:11	43:24 45:20 47:22	150:8,25
109:25 113:5	123:13,14	addresses 30:25	58:9 63:6 64:5	amendments 38:1
115:13 118:18	accidentally 83:14	31:6 95:19 106:9	76:3 77:10 79:4	39:6 120:19
120:3 122:23	account 20:15	130:24	86:20 87:25 92:9	analysis 48:9 53:21
132:5 136:22	23:16	addressing 130:4	104:2 108:16	55:3 56:4,19 69:4
137:16,21 138:5	accountability	adequate 128:11	114:7,16 115:23	69:9 74:14,15,18
able 22:15 32:5,22	76:16	adequately 139:4	117:7 120:7	75:6,24 77:9,12
47:4 52:18 55:14	accurate 37:3	adjourn 9:2	121:11 123:10	89:13 92:24 93:25
60:5 64:9 95:3	71:11	administrative 1:7	127:24 131:13	101:20,24 103:7
96:1,5,7 110:5	accurately 8:11	8:23 30:20 31:24	133:22 134:20	105:15 110:18
112:21,21,23,25	18:13	32:15 33:1,12	136:3 138:8	113:25 114:4
113:10 139:4,23	acknowledging	37:9 41:15 42:21	aligns 64:15	124:12 130:1,10
144:12,19 146:21	127:17	43:21 45:7,11,16	allow 7:17 78:10	132:16 133:1,16
146:24 149:16,20	action 153:11	46:4,14,18 65:1	86:7,7,8 94:5 95:8	134:4,7,17 135:19
150:4,7,13 151:3	activity 29:13	77:25 78:10,10,20	95:15,19	139:12,14,18
151:12	actual 40:19 41:7	121:17 126:20	allowed 86:18	analyze 133:2
absence 121:6	75:14	132:18	90:11,17,25	and/or 34:20,24
129:8,9,17	add 35:15 73:11	administrator 5:22	101:12	57:20 124:18
Absolutely 77:19	80:25 98:11	139:5	allows 27:21 41:3	angle 138:23
accept 127:9,9	adding 33:18	administrators	94:3 97:7 114:20	anomalous 91:14
129:12,24 130:11 131:10 147:15	addition 72:18	142:17	alongside 101:6	answer 7:13,14,18
	123:20	admonishment	109:3	8:19 9:1 20:17
acceptance 127:5,7 130:15 131:23	additional 18:21	104:23	altered 111:5	49:13,18 55:24
147:9	21:12 31:14,15,19	adoption 49:21	Amazon 44:10 51:8	62:24 68:3 93:23
accepted 12:2 31:2	31:25 50:7 72:19	123:7 141:10	62:8	99:25 100:18
99:7 115:16	73:4 75:12 93:13	advice 8:9	amend 50:3 119:23	101:5 109:2
150:25 151:1,18	99:3 109:11,11	affect 74:14 75:6	150:10	121:22 125:23
accepting 127:13	113:11 120:3	77:9,12 103:22	amended 126:15	127:1 131:13
150:23	128:11,18 129:5	113:3	126:16,23	134:8,14 135:24
access 26:13 45:8	136:17 149:4	ago 120:10	amending 121:1	answered 31:11
45:12 53:7 94:10	151:4	agree 27:16 28:14	amendment 13:17	32:18 45:19 46:8
94:25 95:9,12,15	Additionally 74:7	50:3 59:19 102:7	14:13,14,25 32:7	56:21 93:10 125:9
95:15,20,24 96:6	83:13 148:6	102:11,25 103:6	32:8,25 33:7,8,14	131:2,12
96:9,9,9,21 97:6	address 11:14 30:4	111:17 119:13	33:19,21 35:2	answering 24:1
98:18 103:21	30:17 31:8 51:20	121:24 124:24	37:21 38:18 41:14	142:1
105:13 111:3,10	77:8 79:8 82:4	131:16 148:5	41:16,23 44:3	answers 7:12,22
112:13,16 114:3	85:22 87:10 90:18	agreed 43:14 66:12	65:5 66:6 82:17	50:10 66:23 99:18
115:16,18,21,21	95:7,18 96:4,23	66:14,16 118:9	118:18,20 119:24	100:9 106:22
110.10,10,21,21				
	<u> </u>	1	<u> </u>	<u> </u>

30(b)(6) Jennifer Dvorak

Page 155

T				1 age 133
148:9	aside 16:12 85:1	assist 61:10	auditability 28:12	105:20,23 106:1,3
antivirus 52:8	asked 11:4,14	assistant 17:12	92:19	105.20,25 100.1,5
anybody 22:17	13:18,20 19:10	29:7	auditory 8:6	110:9 114:13
28:14 53:6 61:10	20:14 23:6,23	associated 21:25	August 15:16 16:24	123:23 124:5
AOC 83:14 135:15	31:10 32:18 37:9	112:1 121:14	17:1,4 19:13,19	132:15,22,23
137:16,21 138:6	45:19 46:7 47:1	142:20 144:16	50:1 71:2 94:20	132:13,22,23
API 20:13 21:5,7	50:22 57:13 64:24	149:8,16	135:22 136:9	133:12,12,13,17
21:24 132:15,19	65:1 66:24 74:25	assume 8:18 24:8	authentication	134:11,12 137:25
132:21 137:24	75:5 91:10,22	27:11 28:10 29:5	40:17 41:7 51:12	137:25 138:2
138:2 144:22,22	93:8 99:14 100:1	29:11 85:18 87:5	52:7 116:4,5,7	140:9 144:25
144:25 145:9,9,10	102:1,13,24	91:6,25 92:4	author 58:4	145:1,3 148:17,18
149:2,3,6	117:23 119:18	104:10	authority 18:19	149:3,6
APIs 21:1 132:14	125:9 126:6	Assumes 114:6	authorization	await 7:14
137:17,22 138:6	129:25 131:1,11	assuming 7:13	34:14,18 35:6,8	aware 13:12 14:9
applicable 60:12	139:14 141:25	90:15 145:6	35:16 50:17,24	22:21 24:15 32:20
63:14 64:10 67:9	143:22 145:2,4,12	150:11	51:7 52:17,18,19	37:1 45:10 62:9
68:12	145:13,16,18,25	assurances 51:3	65:19 120:11	62:16 72:3 88:1,9
application 54:19	145.15,10,16,25	77:8	authorized 51:5	88:10,16 115:2,7
60:19,20 133:10	asking 6:20,25 8:22	attached 14:12	111:18	136:24
133:14,24 134:10	22:8 32:14 65:20	76:11 106:22	Auto-Accept 45:1	awareness 65:24
134:12,23 148:16	65:21 74:5,8,8	attachment 106:21	139:15,18,24	AWS 34:21 44:11
applications 25:13	96:1 101:17 103:2	attempt 7:18	140:15 142:24	61:25 62:1 71:8
apply 37:11,14	110:2,3	147:14	143:2,3	73:21,22 75:18,20
53:25 60:18 82:14	asks 117:18,19	attention 18:1	automated 84:15	75:22 76:24 77:1
92:4 108:3,3,17	128:15	19:15 20:2 33:22	124:21	77:18,20 78:5,6
122:1,15	aspect 63:2 81:22	34:7 35:20 48:1	automatically	78:20,22,23
appreciate 86:12	aspects 62:18	55:7 70:21 82:19	83:18	AZ 1:24
139:6	assess 21:18,20	89:16 94:13,16	automation 83:17	Azure 34:21 62:11
approximately	30:10 53:22 72:17	97:22 109:1	85:13	62:13,20 63:3
10:21 56:22	74:19 107:16	116:23	availability 21:9	
Architect 17:11	110:5 120:15,22	attestation 43:18	58:24 98:1,7	B
architected 104:8	121:3 144:8 148:2	43:20 44:3 65:22	105:2,3,6,11,14	back 11:11 13:6
104:10	149:16 151:12	73:20 77:18,21	105:17,25 106:10	33:23 37:16 48:1
architecture 61:17	assessed 139:22	78:12,21	107:9,16 108:3,21	53:8 54:11,14
93:16 99:4,14	assessing 21:22	attorney 5:19	109:16 110:13,15	56:4 61:7 68:25
109:19,21 110:10	117:25	attorney's 80:19	113:23 123:22	73:17 93:18 97:22
122:9	assessment 49:21	audio 108:5	131:25 132:8	105:2,7,8 106:4
areas 122:7	51:2 58:24 59:1,2	audit 30:10,14,16	134:1	108:13,14,23
arising 121:25	63:21 68:21,24	50:16 51:13 53:1	available 12:5,21	109:20 118:2
Arizona 5:1 17:5	75:14 76:5 109:23	66:22 67:2 68:18	12:25 20:14,20,23	120:22 121:3
74:10 141:5,8,10	110:1 111:1	68:20 69:14 70:1	21:5,11,19,24	127:2 133:6,7
141:15	128:12 130:10	70:3 71:21 72:2,4	22:5,7 28:1 31:19	135:10,11 136:12
arrival 49:25 55:1	142:3,3 147:7	72:5,20 91:14	46:5,20 83:8 84:4	137:15 146:9,9
arrived 42:5 54:2	assessments 51:14	95:8,9 96:2,5,21	85:22 87:8 90:2	backing 107:18
57:10 72:3 120:9	142:2	99:1	97:9 103:8 105:13	backup 80:13
3,.10,2.0120.9			,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	99:20 106:11
	<u> </u>		<u> </u>	<u> </u>

30(b)(6) Jennifer Dvorak

Page 156

				1 age 130
107:1,7	63:18,19 64:1	81:3 83:1,21	carbon 10:11	cetera 34:22 143:6
backups 107:1	68:14 70:6,14	98:10 135:1,8	card 35:12 36:2,15	chain 111:13,14
bad 129:15	71:10,14,14,20	breaking 58:18	36:20 37:7 42:24	123:17
base 111:1 140:18	75:15 78:16 83:25	briefly 135:13	43:3,3	chance 8:10 10:1
based 7:7 49:4	90:20 91:9 97:2	bring 37:8	case 5:20 12:2 13:3	16:4,5
59:24 60:1,2,11	99:16 106:20	broader 67:4	19:2,5,9 29:14	change 77:16
60:14,22,24 61:4	108:11 113:19	110:14	31:2 40:4 41:3,8	changed 75:11
66:7 71:12 72:19	118:24 119:8	broadly 53:25	53:3 59:14 61:1	76:12
74:20 85:7,15	123:3 124:3 125:4	108:3	63:2 67:16 77:23	changes 18:17,18
86:6,22 88:12	125:3 124:3 123:4	brochure 97:12	81:18 85:7,24	92:21
90:2 94:8 95:20	138:4 139:13	brought 53:3 55:7	86:22,24 87:2,6,7	characterize 15:19
97:14 101:7	140:5,7 141:2	browse 16:5	87:18 90:2,10,16	56:15
103:15 111:1	150:11	Bryan 2:5 5:19	90:24 92:13,22	charge 147:10
113:9 118:18	best 7:15 8:6,13,19	build 120:11	93:7 94:6 99:7	chart 3:13 17:25
132:2 142:6 143:4	9:9 18:15,16 49:3	132:24 145:10	111:6,12 115:17	18:8,13,22 59:7
145:10 151:24	49:6 102:20	149:9	115:18 124:4,14	checked 99:6
baseline 128:14	better 35:5 53:9	building 132:18	124:18 129:4	chicken-and-egg
129:2 148:7 150:1	59:23 61:9,18	built 35:17 43:2	140:6 141:3 143:8	48:21
bases 139:11	83:1 139:24	53:4 65:4 69:5	143:15 144:13	Chief 16:22 18:3,5
basic 6:22 9:12	beyond 21:15	78:16 144:1	151:18,23 153:13	147:2 148:25
49:13	30:11 31:1 39:24	Bulldis 1:24 153:21	cases 86:1 115:19	choose 127:9
basically 19:24	40:2 59:24 62:22	bullet 57:18	categories 6:11,14	chunk 135:1
basis 11:16 25:4	68:1 79:3 88:6,14	business 17:18	7:2 11:13 46:15	circumstances
72:14 79:14 83:2	108:15 118:16	button 27:3,4,12	category 11:15	13:11
101:16 121:8	120:6 121:21		Cave 2:5 5:19	claiming 48:23
136:13,18 137:9	125:3 127:1	C	center 2:5 39:18,20	clarification 8:17
137:11 139:25	BILL 2:17	C 2:1	39:22 40:11,13	93:5
140:4	bit 24:19 35:4	CA 1:24 2:6 153:21	63:8 72:17	clarify 8:16 48:15
Bear 6:2 11:9 88:19	48:21 62:5 74:21	cache 99:11	central 109:22	Clark 24:23 25:5
becoming 149:3	83:22 110:14	cadence 106:11	certain 51:22,23	25:14 44:14,16,18
beginning 89:7	117:8 146:9,9	107:1,2,7	55:5,7 80:9,16	44:20,25 45:7
begins 34:13 94:18	block 100:13	California 153:4	90:10,16	clear 7:23 8:13
97:4	Boise 1:16 2:12	call 19:22 150:21	certainly 57:11	22:22 30:21 47:8
behalf 6:16 7:4,6	bold 100:13	150:24	98:5 99:24 124:16	56:22 64:1 67:19
30:20 46:14 78:24	bolded 81:7	called 69:20 70:10	144:16 148:15	71:1 85:19 89:24
127:13	bottom 34:8,12	70:16,18 81:7	certainty 110:21	94:20 98:17 103:5
behavior 91:14	37:19 56:9 81:6	117:24 127:4	certificate 24:19	104:7 113:12
believe 6:19 13:22	103:3	calling 5:25 76:1	25:12 153:1	114:1 128:9
15:4,17 16:3,9	bounds 74:8	calls 81:16 87:12	certification 41:11	141:24
18:2 20:5 21:8	Box 2:12	122:19	75:17,23 78:11	clerk 94:11 111:11
24:23 25:20,24	branch 141:12,13	capabilities 132:23	79:1	123:18 133:21
26:3,12,23 27:1	141:15	capability 148:17	certifications 25:14	139:4 151:17
27:15 31:23 44:22	breach 81:18 129:4	capable 61:4	certified 51:9 153:1	clerks 26:13 138:13
45:2,2,23 47:12	break 35:4 42:9,15	capacity 1:7 5:22	153:3	142:7 143:6
55:5 56:14,17	42:18 79:23 80:2	9:6	certify 153:4,10	click 27:4,5,12
		captured 99:2		
			l .	ı

30(b)(6) Jennifer Dvorak

				1 490 107
client 34:5 80:21,21	complaints 98:18	103:24 104:12	86:7 87:15 89:16	constituents 106:5
closed 151:16	113:14	116:21 118:13	89:25 90:1 91:25	Cont'd 4:3
closed-loop 123:19	complete 65:18	119:8,19 120:2	97:7,17 101:9	contact 24:9 45:6,7
cloud 35:10,17	67:20 117:17,22	123:2,5,20 124:24	111:24 114:1	45:11,15,16
52:13 77:4 108:18	144:19 148:7	126:22	124:11,12,13	112:11
121:14 122:13,14	completed 13:17	conclude 29:11	configure 13:3	contacted 45:15
128:21 148:6	19:12,14 66:3	92:24 94:3	configured 84:23	78:20
cloud-based 4:9	117:14 150:9	concluded 152:6	84:25 85:9,20	contain 12:8 82:21
35:13,14,15 37:14	completely 36:24	conclusion 54:9	87:9 90:9,12,16	contained 54:18
39:7,15 41:10	43:25 84:15 110:6	55:10 61:3,4	90:23 91:6 92:1,5	60:23 98:2,19
51:18 56:2 65:17	110:7 119:14	120:6 121:20	92:6 101:8 124:15	149:5
69:5 72:16 74:2	123:12 125:11	120:6 121:20	configuring 85:12	contains 84:5
81:24 117:10	completing 81:23	conditions 4:9	confirm 29:16	context 59:4 98:17
129:1,6 150:1	82:12,12 150:22	35:14,17,22 36:6	confirmed 75:23	101:9 105:25
CNS 2:17	completion 153:13	37:11,25 38:24	107:2	continue 68:8
CNS's 11:18	compliance 63:15	39:5,14 41:12,18	confusion 110:23	contract 13:17
136:16	63:23 64:11 68:13	41:24 42:4,19	conjunction 57:12	14:13,13,24,25
code 90:11	79:10	43:15 50:5 51:6	58:8	15:2,5,19 16:8
codes 90:3,16,24	comply 63:14	55:20,23 65:18	connected 109:6,8	32:5,7,7,10,24,24
124:5	68:12	69:6 72:16 73:6	118:22	33:6,6,8,8,11,13
coding 57:25	component 27:18	79:10 81:24 82:3	connection 36:15	33:19,21 35:2
collect 37:6	27:20 46:25 52:13	117:10 118:8	36:21 65:2 66:13	37:21 38:17,25
color 57:25	components 110:8	120:14 121:7,13	67:21 69:4,8,13	41:13,22 42:2,22
column 18:2,2 27:3	122:10	121:19 122:1,15	71:22 73:6 79:1	43:3,4,10,12,12
come 8:3 10:13	comprehensive	123:7 125:8	79:19 97:11 118:6	49:14,23 50:15
49:9 53:6 80:8	48:10	126:17,23 128:22	120:2 121:7	54:23,25 55:4,13
114:22	computer 80:12	129:1,6 148:6	141:10	55:21,22 65:3,4,5
comes 41:16,22	134:1	150:1,23	consequences	65:11,12 66:5
150:10	concern 8:24 31:5	conduct 19:10	124:20	68:5 73:2,7 76:11
comfort 52:19	31:7,9 85:22	49:20 52:18	consider 19:20	76:17 77:7,7,13
comfortable 76:9	88:12 91:12,16	Conducted 1:17	29:25 89:12 92:23	78:9,16 79:18
131:9	92:15 96:4 107:9	conducting 55:2	103:11 107:14	82:2,12,15,17,17
comma 94:18	113:7 119:18	59:2 89:13	124:13 132:17	108:18 118:18,19
comment 47:4	121:9	confidential 3:22	133:2 134:17,18	120:19,25 121:2,4
common 77:20	concerned 24:19	84:12 107:23	148:21	121:8,15,17
93:19	51:18 52:21	confidentiality	consideration 77:3	122:23,24 123:4,6
communication	concerning 6:25	58:10,11,15,23	146:23	125:6,15,18,19
71:6	19:9 33:13 138:5	98:1,6,11,12	considered 28:24	126:14,23 128:5,5
communications	141:1	105:10 109:16	54:15,18 57:21	128:21,25 140:3
10:5 19:7 135:15	concerns 26:9,15	110:15 113:23	83:10 98:7 105:15	143:25,25 144:1,4
135:18 136:5,8	30:4,17 31:14,20	123:21 131:25	107:22 134:4,22	144:8 146:16
140:24	32:16 51:20 52:12	132:7	135:23	147:24,25 148:2
company 69:1	76:25 77:8 79:8	configuration 47:4	considering 67:25	148:12,12 149:24
compel 32:9	82:4,6 87:10	47:5 51:24 72:20	consistent 60:19	150:8,10,15,25,25
compelled 32:12	90:19 91:23	77:3 84:22 85:2,7	117:5,9	151:3
L	<u> </u>	ı	<u> </u>	1

30(b)(6) Jennifer Dvorak

contracted 64:23	18:6,7,10 26:1,4	counsel 6:22 7:12	26:9 30:4,21	crosstalk 104:24
64:23 65:2 72:22	27:22 28:17,18	7:13,22 9:9,10,19	31:21 33:12 39:4	CSR 153:21
74:6 79:14	29:17,18 30:1,2	35:14 36:13	39:22 40:11,12	curious 19:4
contracting 35:10	31:22 35:24 36:5	120:13 153:10	41:23 42:6 43:18	105:11,14 109:15
80:15	36:17 37:4,23	Counsel's 118:24	43:20 45:12,18	current 14:14 78:9
contracts 35:15	39:1,6 40:11,25	County 5:1 24:23	46:6,20 47:19	78:16 79:18 144:8
37:12,13,15 38:1	41:1,19,20,25	25:5 44:14,16,18	49:20 50:2 51:17	currently 14:12,15
38:7 39:2,5,6	42:1,4,5 43:10	44:20,25 45:7	51:19,20 52:11,21	14:16 15:2 20:25
42:22 78:17	46:6 47:20,23	County's 25:14	54:2,24 55:1	22:12,15 31:22
120:19 126:2,7	54:13 55:25 56:6	course 9:25 11:6	56:23 62:1,10,12	32:23 33:8 38:25
150:20	56:7 57:21 59:3,5	135:25	63:3,9 64:18 65:7	39:22 42:22 43:10
contractual 65:13	61:5,6 63:11 64:2	court 1:1 7:20 8:10	65:15 66:13 67:21	45:3 47:18 50:11
76:16 81:16 117:2	67:22,23 70:7	8:23 12:9,9,10	67:24 69:25 70:13	50:14 52:11 54:23
119:22 129:8,17	71:24,25 73:3,15	25:7,7,14 27:21	72:1 73:14 76:25	66:18,20 67:24
131:7,17	73:16 79:11,15,16	30:17 37:6 40:19	78:25 79:9 83:25	73:14 79:17 95:11
contractually 49:5	79:19,20 80:24	60:12 62:7 72:13	85:18 86:16,17,18	96:11 112:10
49:18 65:8,11	84:1,6,13,14 91:2	76:2 80:6,23 95:9	87:21,23 88:3,4	126:15 143:17
control 58:16 94:25	94:22 95:3,6	96:4,13 97:12	88:10 100:12	146:16
95:8,8 96:21 97:6	96:15 97:1,16,20	98:2,20 112:22	108:21 112:11	custody 111:13,15
99:1 101:15	99:18 100:14	115:1,2,4,14	113:13 116:20	customer 34:23
116:18 122:22	103:10 106:3	116:25 118:1	118:5 119:19	73:19,21 75:17
128:15	107:10,11 111:19	125:14 129:19	120:10 124:2	customers 45:3
controlled 52:9	113:15 115:22	133:9 136:8,9	132:17 135:15	77:18 114:24
59:24	116:3,4 118:6,7	142:7,17 143:2,6	140:25,25 149:1	cybersecurity
controls 31:17,19	118:10,11 120:1,4	143:17 144:12	courts' 25:17 72:5	11:17 47:1,16,25
32:10 65:21 68:22	121:9,16 123:25	145:8,24 146:23	75:21 79:8 85:22	60:15 105:18
92:18 93:13 98:22	125:1,8,15 126:18	147:1,12 148:4,23	117:2 124:6 141:1	119:7 121:24
99:4 104:4 111:4	126:19 127:22	148:23 150:14	cover 10:14 15:15	136:15,23 137:12
128:16 129:2	129:10 130:1,2,4	153:5	15:18 70:3 89:5	138:20 139:9,12
132:6 148:7 150:2	130:12,25 131:10	court's 47:5 80:12	138:4	142:3 151:2
conversation 23:9	131:21 132:14	87:10 90:19	covered 70:14	cybersecurity-wise
23:18 78:4 103:12	139:22 141:6	103:23 104:12	98:11 135:20	139:2
113:9	143:23 145:10,11	113:14 115:17	136:20 137:10	
conversations 9:8	148:20 151:5	141:10 143:15	139:10	D
46:24 112:5 113:5	153:9	court-hosted 41:5	crashing 106:2	D 5:15
cool 106:6	correctly 36:16	62:18 63:1	create 28:11 76:25	dashboard 4:8
copies 101:22	38:23 46:3 49:1	courthouse 1:3	147:3	29:13
102:11	82:1,24 84:10	5:20,21 133:4,17	created 35:11,25	data 34:20,24
copy 6:5 10:11	85:21 87:9 90:8	133:25	36:2,14 57:4,5,11	39:18,19,22 40:11
102:1 103:8,21	90:13,13,16,18,24	courts 1:8,12 2:18	99:12 111:24	40:13 48:11 49:12
110:3,4,25 114:2	91:1,7 92:1,1,5,6	5:22 11:7 12:12	creating 36:8	51:19,21,23 52:9
153:9	95:5 98:4 126:16	12:24 15:3 16:21	credit 35:12 36:2	52:22 54:17 55:6
corner 34:8 56:9	cost 21:6,13 138:10	16:25 20:25 22:17	36:15,20 37:7	55:7 57:21 58:16
correct 10:22,23	costs 21:25 142:19	23:6,13,21 24:9	42:24 43:2,3	60:22,23,24 61:5
13:9,10 14:18	145:7 149:7	24:10 25:6,25	cross 9:11	63:8,10 72:17,17
		, ,		73:23 75:19,21
	ı	I	I	I

30(b)(6) Jennifer Dvorak

г				1 age 139
76:12,22 77:2	23:24 24:5,8	detail 38:9 66:11	Director 1:8 17:12	92:19 93:1,9,12
80:13 81:17,18	47:10 145:13,20	66:24	disagree 102:12	93:15 94:11
82:21,23 83:10,14	demonstration	detailed 72:15	disagree 102:12 disaster 107:20	101:11,23,23
83:24,24 84:8	23:21	106:25	disclosed 58:16	101.11,23,23
85:5 95:3 97:6,8	demonstrations	details 57:16	124:9	102:2,8,10,16
98:1,7,19 100:20	23:7	detection 91:14	discovered 147:16	105.3,7,9 104.11
102:21 105:11	Department 17:5	determine 12:24		
102:21 103:11 107:18 109:22	141:5,9		discovery 137:10	110:3,4,24 111:3
	/	70:11 101:11	discuss 87:22 88:3	111:5 114:2,13,20
113:14 129:4	departure 17:10	determining 59:12	132:21	117:15 123:17
145:25 146:6	depend 111:23	60:8 96:25	discussed 68:11	124:5,14,18 129:2
data's 76:10	depending 60:18	develop 35:14	97:16,24 98:13	140:12 152:1,3
database 104:6	60:21	120:13,14	99:2 109:15	document's 92:20
110:25	DEPONENT 10:10	developing 148:11	110:16 113:25	98:21
dataflow 93:15	14:23 21:4 22:20	development 55:23	135:14,17,20	documentation
99:5 102:21	24:15 29:9 30:9	diagram 99:5,5,14	136:5,19 137:20	64:12 65:21 66:25
109:21 122:10	30:24 31:13 32:20	102:18,20 109:19	146:20	148:8
date 1:23 22:4	40:4 42:12 45:21	109:21,21 122:10	discussing 21:16	documented 122:9
66:19 67:19	46:9 47:14,23	diagrams 93:16	71:21 81:3 97:11	documents 11:24
150:11	63:7 64:6 76:4,19	99:22 117:19	101:10 140:24	12:5,7,11,18,20
dated 15:15 19:19	77:11 78:15 79:5	difference 48:17	discussion 35:1	12:20,25 26:14
David 5:16 36:12	79:25 86:21 87:13	76:5,7 133:9,11	38:11 135:7	30:15 41:4 53:2
day 153:17	88:1,8,16 91:4,9	134:13,22	discussions 35:3	76:1,2 80:16 83:5
days 90:3	92:10 101:3 104:3	different 10:9,14	37:22 125:19	84:12 85:13,19,21
dealings 140:25	104:16,25 108:17	12:22 29:24 32:14	displaying 25:8,11	85:24 86:3,16
141:15	111:23 114:8,17	56:11 61:2 85:9	distinction 9:4	87:17 90:10,21
decide 127:19	116:15 117:8	88:19 102:8	distinguish 28:19	91:10 94:4,6,10
decision 129:22	118:17 120:8	123:12 124:4,14	district 1:1,2	99:6,10,21 100:4
decisions 12:10	121:12 122:5,20	138:23 143:21	135:15 142:12,20	101:11 102:7
deck 3:19 89:6,7	123:11 125:4,10	147:17,17 151:13	division 3:15 18:15	105:13,21 109:4
140:7	125:25 126:4,9	differentiator 28:8	divorce 12:10	111:10,11,12
declarations	127:25 131:3,14	differently 62:6	document 6:4,7	115:16 116:2
138:15	133:8,23 134:9,21	106:1	11:12 13:3 15:9,9	123:13,14,18,19
deem 82:3	136:4 138:9	difficult 70:11	15:23 16:10,16	124:2,21,25
deemed 128:10	deposition 1:11 3:1	122:24	17:22 19:18 20:7	125:16,17 137:3
default 86:3,4	3:12 4:1 5:23,25	difficulties 108:10	20:11 26:16,19	151:17,18,20,21
defendant 1:9 2:9	5:25 7:3 8:5,25	difficulty 108:12	27:3,8,23 29:3	doing 50:8 52:4
6:17 7:4,7	9:18 11:1 18:24	direct 18:1,18	34:1 53:12,16,18	65:23
defendant's 11:18	19:6 135:12 137:8	19:15 20:2 33:22	56:8,11,13 58:4	downloading 114:3
136:16	146:21 152:6	34:7 35:20 48:1	61:8,11 64:10	draft 81:9 126:2
defined 112:2	153:3,5,8,13	70:21 82:18 94:13	83:8 84:1,4,22,24	drafted 103:15
defines 111:21	depositions 80:11	94:16 97:22 109:1	85:8 86:23,25	dropping 108:5
definitely 23:23	deputy 36:13	direction 10:14	87:2,7,7,18 88:19	drug 118:1
57:8 60:4	described 114:10	102:21	88:22,25 89:10,12	due 9:25 108:9
degree 17:16,17	designee 153:5	directly 77:24 78:6	89:17 90:4 91:13	Duke 2:10,11 3:6,8
demo 23:12,14,17	desk 19:19 49:9	88:4	91:16,19,20 92:11	10:7 14:21 15:10
	<u> </u>	<u> </u>	<u> </u>	<u> </u>

30(b)(6) Jennifer Dvorak

				1 490 100
21:2 22:19 24:12	140:24	3:20,21,23 34:4	error 87:20 91:2	94:14 97:18,23
29:7 30:6,19	easiest 23:25	71:2 74:3 89:3,5,5	especially 81:15	100:8 105:8
31:10 32:18 39:24	educate 7:8	106:21 112:5	104:5 110:23	106:21,23 116:17
40:2 42:11 45:19	education 17:15	116:14,17 125:17	118:21	117:9 118:8 123:7
46:7 47:8,21	effect 42:23 56:23	emailing 94:21	established 125:6	125:8 126:17
55:17 62:22 63:5	65:22	emails 9:20,23 10:1	estimate 10:15	127:3 135:11
		· ·		
64:3 68:1 75:25	efforts 145:7	10:4,8,10,14,20	56:25 135:2 145:7	140:10 141:25
76:18 77:10 78:13	eFile 11:25 14:19	10:21 99:17	et 34:21 143:6	147:8,19,19
79:3,24 80:4 81:1	15:1,3 26:4,6,10	106:12 111:19	evaluate 124:13	exhibits 3:11 4:4
86:19 87:11,24	27:17 28:20 29:20	Embarcadero 2:5	event 47:13	9:24 10:5 21:16
88:6,14 91:3,8	29:22 30:18 31:22	embedded 32:10	EVETT 2:11	135:17
92:8 96:16 103:25	32:1,17 33:4	93:18 120:21,25	exact 10:16 31:1	exist 36:6 110:18
104:14 108:15	36:22 39:9 40:10	129:6	60:13,14	123:3,3,3
111:20 114:5,15	41:22 49:22,22	employee 3:14 66:2	Exactly 106:4	existence 47:18
115:23 116:13	52:13,23 67:12	employees 65:24	EXAMINATION	existing 45:18 65:5
117:6 118:15	68:18 69:21 70:4	encompass 86:24	1:11 3:3,4	121:1 122:24
119:1,4,13 120:5	70:9,14,16 71:19	87:1 98:8 124:18	examine 21:17	exists 122:21
121:10,20 122:3	71:19 73:1 79:19	encompasses 81:15	examined 5:8	experience 24:11
122:18 123:8	83:5 100:23	encompassing	examples 88:11	69:22 112:12
124:8 125:2,9,21	103:23 108:22	81:19	115:2	131:6 146:2,3
126:3,8,25 127:23	109:7,18 110:19	encryption 99:10	Excellent 80:4 90:6	experienced 146:11
130:5 131:1,11	111:9 113:18	engage 23:16	exchanged 99:18	experiences 88:4
133:5,19 134:6,19	115:7,21 116:2	ensure 97:25	exclude 86:4,16	explain 58:5 65:14
134:25 135:6,21	117:4 119:10,20	ensured 98:21	excuse 41:12 89:20	102:19 151:13
136:3 138:7,12,23	122:2,17 124:1,25	ensures 95:2	100:16 108:20	explicate 102:18
139:1,23 141:23	125:6 126:14	entail 21:22 86:1	execution 82:2	exploited 114:19
151:10	eFiling 71:7,16,18	128:23 132:11	executive 34:5	137:2
duly 5:7 153:6	101:6 109:3	enter 41:3 121:17	141:13	expose 82:22 85:4
Dvorak 1:13 3:1,17	EFM 71:7 97:7	enter 41.3 121.17 entered 80:6	executives 127:9,19	_
,			,	exposed 12:1
3:21,22 4:1 5:6,15	103:10,23 104:11	entering 49:22	129:21 131:9	exposing 124:21
5:18 19:19 42:17	109:22 110:7,8	150:14	144:13 147:11	extent 125:3,22
81:2 96:23 153:5	116:3 119:3 122:8	Enterprise 13:15	150:24	external 52:4
	123:15,25 124:17	54:8 69:11,15,23	exhibit 3:10 4:3 5:4	107:23
	either 10:11 22:4	117:16	5:24 6:11 11:12	external-facing
E 2:1,1,10,10 5:11	44:10 63:19 64:7	entire 30:25 128:6	15:9 16:11,14	114:18
141:22 149:12	65:10 68:14 78:5	entitled 7:11 8:16	17:21 19:15 20:3	eyes 80:19
151:9	78:7 88:17 115:2	9:7,9 46:17	26:17 27:7 29:2	
e-file 27:4 93:3	147:15	entry 95:10	33:23 35:19,20	<u>F</u>
124:1,25	either/or 86:22	environment 34:24	37:17 38:24 41:19	facing 26:12 28:8
e-filers 124:6	elaborate 35:7 58:5	73:22 75:10,18	41:25 42:19 43:14	fact 38:13 69:24
e-filing 26:1,3 29:5	92:16	101:8 104:6 110:6	48:2 50:5 53:12	75:1 105:20
33:11,13 37:2	electronic 4:5,6	environments	55:20 61:11 63:13	144:14 146:22
50:3 109:5 124:6	26:23 102:7	34:21 100:20	70:21 73:5,17	152:1
140:16 141:11	eliminate 130:23	equally 109:17	79:11,17 81:4	factor 77:7 105:16
earlier 48:6 65:6	email 3:16,17,18,19	122:1,16	88:22,24 93:20	133:16 134:13
71:23 74:3 75:20		, = =		factors 28:19
	<u> </u>	<u> </u>	<u> </u>	<u> </u>

30(b)(6) Jennifer Dvorak

				Page 161
105:14	104.0 19 105.1	fine 10:15 80:19	118:15 120:5	21.20 22 28.1
105:14 facts 114:6	104:9,18 105:1 108:5,8,11,20	119:16	118:15 120:5	21:20,22 28:1 33:3 34:5 46:16
factual 11:16	112:3 114:11	fines 58:17	126:25 127:23	53:1 138:10 140:9
136:13,18 137:9	115:1,24 116:20	firm 5:19	133:19 134:13	149:6
137:11	118:4,23 119:2,6	first 5:7 6:21 13:8	formal 120:11	further 69:17
failure 106:2	119:17 121:6,16	27:24 53:15 54:3	147:3	80:25 83:22 97:3
fair 9:11 86:12	121:23 122:13	54:7 57:13 61:7	forming 61:4	100:8 102:18
138:21 143:19	123:1,25 124:10	61:13 66:22 68:19	forth 60:10 87:19	141:20 145:20
fairness 138:12	125:5,12 126:1,6	70:25 71:5,5 81:5	146:9	151:7 152:5
falls 14:7	126:11 127:2	82:19 83:2,6,23	forthcoming	153:10,12
familiar 124:4	128:3 130:8,9	94:18,24,24 95:17	143:20 146:6,18	furthest 24:20
familiarize 16:6	131:6,16 133:15	95:18 96:3 97:5	forward 7:11 10:21	future 39:5 43:5
FAQs 3:24	134:3,14,24 135:4	97:24 100:18	23:4 37:15 38:1,7	78:17 79:14
far 18:2 21:11,14	135:10 136:2,7	134:5 148:5 149:4	38:9 48:24 54:21	
22:6 37:1,13 39:2	138:17,25 139:6,8	Fisher 3:19,20,23	60:5 82:12 120:18	G
40:16 49:24 50:6	139:25 149:13	34:5 71:2 116:18	127:10,21 129:19	$\overline{\mathbf{G}}$ 2:4
95:14 135:20	152:5	five 59:8	147:15 149:24,25	game 138:21
136:4 138:1	fields 21:23 97:18	Floor 2:5	150:6	gathered 74:17
148:19	fight 68:4	flow 96:8	found 147:14	GCP 34:21
feasibility 132:17	figured 139:1	flowing 102:21	foundation 24:13	gears 16:19 126:11
feature 57:10	file 4:6,7,8 12:16,25	focus 19:3 81:20	30:7 46:8 78:14	general 35:13
federal 50:24	21:24 36:23 40:16	85:2 121:5	87:12 111:21	50:18,19 63:16
153:13	44:8 87:18 99:8	folks 12:12 26:14	114:15 120:5	112:17 113:10
FedRAMP 50:23	99:12 103:22,24	45:25 123:16	122:3,19 123:9	115:11 120:13
51:4,9,10 52:17	118:13 122:11	150:19	125:3,22 133:20	generalities 64:17
feel 131:8	123:16 149:7,17	follow 64:13	four 59:13	generally 11:20
fees 36:22 37:6	149:21 150:5	follow-up 19:23	frame 10:15	generic 111:25
58:17	151:12,13,15	20:9,10 75:8	framework 64:14	gestures 8:3
Fetterly 2:4 3:5,7	filed 12:2 151:18	112:5 149:14	64:14	getting 49:2
5:12,18 10:13	filer 4:8 29:13 91:1	151:11	Francisco 2:6	GIRDNER 2:17
11:11 15:1,8,11	91:2 111:9 133:21	followed 15:22	free 140:15	give 8:9,9,10 9:2
21:8 22:22 24:21	151:16	97:5	freeze 108:7	16:4 35:1 37:20
29:10 30:12,16	filers 27:21	following 48:20	fresh 55:15	49:5 56:25 66:15
31:3,21 33:1 40:1	files 31:1 66:2	68:10 89:3	Friday 138:22	66:16 76:24 93:17
40:6 42:8,13,17	filing 4:5,6 26:24	follows 5:9	front 6:5 26:24	95:24
45:22 46:12 47:12	29:13 30:15 36:22	foregoing 153:5,12	48:3 135:12	given 49:7 71:13
47:15,24 55:19	90:3,22 123:18	form 14:21 21:2	full 7:16 32:3 33:20	110:22 136:25
63:1,9 64:8 68:7,8	124:5,14	22:19 24:12 25:3	44:2 71:5 75:10	144:2 145:6
76:6,21 77:17	filings 12:8,10	30:6 46:7 61:2	79:9 94:17 132:7	146:13
78:19 79:6,21	27:21 98:2,20	64:3 75:25 76:18	fully 55:14 132:2	gives 104:23
80:1,7,24 81:2	filled 129:3	78:13 80:7,17	function 101:15	go 6:21 7:11 14:22
87:5,21 88:3,10	filling 100:21	86:19 87:11 91:3	140:16	15:10,20 16:2
88:18,21 91:5,17	find 9:3 145:23	96:16 104:1,15	functional 96:14	21:3 24:4,14,24
92:14 93:6 96:20	findings 52:6	111:20 114:15	functionality 20:14	26:17 27:2 30:8
100:25 101:4	114:25	115:23 117:6	21:6,12,14,17,18	30:23 31:12 32:19
				37:16 39:20,25
		-	-	-

30(b)(6) Jennifer Dvorak

				1 age 102
40:2,3,8 43:24	govern 9:13	head 8:2	Howland 3:18 18:9	83:25 85:18,22
45:20,24 47:22	governed 95:1 97:6	header 81:7	18:25 19:9	86:15,17 87:21
53:8,12,15 54:11	116:19	heads-up 35:2	HTTPS 25:13,22	88:3,10 95:23
54:14,21 59:24	government 141:13	37:21	26:7 44:21	100:12,14 108:21
61:7 63:6 64:5	grab 29:7	hear 36:15 100:25	HTTPS/SSL 24:18	112:24 115:1,2
68:25 71:12 76:3	Granicus 141:11	heard 20:23 43:5	human 83:16 84:21	116:20,22 117:2
77:10 79:4,22	granted 95:2,20	65:6	84:22,24	118:5 119:19
82:18 86:20 87:25	graph 57:24	heart 99:19	humans 84:15	124:2,6 125:14
88:22 89:21 92:9	graphic 58:8,13	held 16:23 52:22	hypothetical 85:16	132:17 142:8,13
93:20 94:6 97:3	great 34:11 79:24	help 48:19 82:9	88:13 104:20,21	142:21 143:4
103:19 104:2	107:18 129:11	91:17 92:14	114:6,9 115:3	142:21 145:4
105:7 106:4,14	greater 58:20	109:24 128:17	114.0,7 113.3	146:23,25 147:11
108:8,16,23 110:8	green 100:13,15	helpful 102:18,22	I	148:3,22,24
114:7,16 115:23	106:16,22	helping 150:19	i.e 100:20	150:13 153:5
117:7 120:7,15,21	ground 9:12	helps 128:9 131:14	IaaS 62:1,8,10,19	idea 146:5
121:2,11 123:6,10	group 42:10 90:11	Hey 106:5	63:3,10 73:20	ideally 121:13
127:2,24 131:13	groups 85:8 86:24	high 54:16 57:17	76:15 79:2 122:14	IDENTIFICATI
133:22 134:20	87:1 90:4,17,25	high-level 117:19	IaaS/PaaS 34:21	3:11 4:4
135:3,10 136:3	124:17	high-risk 54:19	iCourt 3:24 4:6,7,8	identified 6:2,11,18
138:7 147:25	guarantee 98:23	higher 131:17	26:4,6,11,24	7:2 8:25 9:17,24
149:1,23 151:5	guess 27:13 28:4	highest 17:15	29:22 44:19,20	18:3 31:4 46:15
goal 120:18 121:2	31:3 32:14 34:8	highlight 34:11	112:17,19,20,22	55:5 92:2 95:23
goes 68:16 137:11	47:17 57:16 64:16	highly 107:22	112:23,24,25	96:24 128:8
going 15:8 17:20	65:9 67:20 68:19	Hippler 138:16	113:10,17 115:11	129:18 131:8,18
23:4 27:7 34:11	72:12 73:5,18	hired 146:25 147:2	115:12,15,20,24	identify 6:14 36:10
38:1,9 42:8 56:4	76:4 84:19 89:17	hold 17:13 35:19	116:1	81:13 86:17 95:14
68:2,4 73:17	96:1 101:19 102:4	113:21	ID 2:12	identifying 34:23
79:22 83:21 84:12	109:1,14 110:14	home 134:1	Idaho 1:2,8,12,16	150:18
94:9 96:2 105:8	123:5 127:16	Homeland 17:6	2:18 5:22 12:23	identity 95:1 112:9
109:14,20 123:12	132:13 133:8	141:5,9	15:3 16:20,25	112:18 113:2,20
134:25 135:3,10	138:18	hopefully 76:11	20:25 22:17 23:6	116:9,19,21
137:15 139:23	guys 10:8	host 19:7 143:20	23:13,20 24:9	immediate 122:21
going-forward		hosted 25:17,19,20	25:25 26:9 30:4	impact 57:25 58:11
79:14	H	39:17,19,22 40:11	33:12 39:4,22	58:14,17,20,20
good 34:23 73:21	hand 8:3 135:16	40:12,14,15,17,18	40:11,12 41:23	60:7,9,17,23 61:3
75:18	149:23,23	40:19,22,25 41:7	43:18,20 49:20	75:12,14 142:7,11
goodwill 58:19	handle 139:24	41:8 61:14 63:7	50:2 51:17,19,20	142:16
60:13	handled 80:22	74:25 76:23 101:6	52:11,21 54:24	impacts 143:5
gosh 36:1	116:4	109:3	56:23 62:1,7,10	implement 21:1
Gotcha 41:9 42:7	handling 146:13	hosting 44:7 51:18	62:12,18 63:1,2,9	128:4,20 137:16
gotten 120:24	hands 92:11	hosts 143:12,13,15	64:18 65:7,15	137:22 138:6
GovCloud 51:8,10	Hansen 18:5	hour 42:9 79:22	66:13 67:21,24	implementation
51:19 52:1 71:8	Hansen/Marx 3:16	housed 72:18 77:2	69:25 70:13 72:1	119:7 141:18
75:21,22 76:24	happens 27:11	110:24	72:4 73:14 75:21	implemented 48:22
77:1	52:25	housing 80:13	76:1,2,25 77:25	142:22
	hard 21:18 48:20	_	78:25 79:8,9	
L		1	<u> </u>	l

30(b)(6) Jennifer Dvorak

				1 age 103
implementing	indication 100:5	61:23	intersection 60:16	Jessi 34:5 71:2 89:3
127:21 132:10,12	144:2	informed 10:25	intersection 60.16	116:18
132:18 142:11	individual 9:6	33:2	intimately 124:7	job 147:5,13
147:23	142:20	infrastructure-as	inventory 40:9	148:25
implicate 98:19	individuals 18:9	61:16	investigate 32:22	John 5:18
implicated 109:18	inform 75:13	initiate 78:3	33:3	join 50:23
implications 85:11	150:19	input 76:13	investigating 21:5	joining 51:1 62:14
110:4 113:2	information 9:8,21	inquired 23:8	116:25 145:19	136:9
	12:9 16:22 17:11	_		Jon 80:17 134:25
implied 23:17		inquiring 117:24	investigation 24:20	135:22
important 7:19,24	17:19 18:3,5,14	insight 111:4 141:14	involve 44:10 113:5	
8:8,12	19:25 21:12 22:3		involved 11:4 36:8	jon.fetterly@bcl
Improper 114:6	22:8 23:10,23,25	Insofar 51:17	143:18	2:7
include 39:9,11	24:6,7 25:7 28:11	instance 44:13	ISC 3:13 4:9 17:25	Jonathan 2:4
42:25 43:5 46:16	28:22 29:14 30:11	46:18 64:13 90:10	22:15 34:20,24	judge 138:16 139:5
51:2 56:2 125:7	31:17,25 32:9,13	147:7	36:13 40:20,22	judges 142:12,12
128:21,25 142:10	46:10 48:11,23,24	instruct 7:14 68:2	41:8 57:10 62:14	143:6
142:19	49:4,7,19 52:16	121:22 127:1	73:23 75:19 81:17	judicial 141:15
included 21:6 33:9	58:14 59:15,22,25	Instruction 68:7	117:9,13 128:25	142:20
51:25 68:17 69:16	60:2,3,4 61:2	instructs 7:13	129:5 132:2	July 24:25
69:18 73:12	64:25 65:2,8,16	intact 92:20	issue 21:9 61:5	jump 136:12
126:24 136:24	66:8,9,15,16,18	integrity 58:23	76:14,23 89:15,25	June 10:18,21 11:5
147:4	66:21 67:21 69:13	91:15,19 92:20	90:8 91:1,20 92:2	13:8 23:9
includes 80:11	71:13 73:5 74:16	93:14 98:1,6,15	92:3,11,15 95:7	jury 13:15 14:1,4
128:24	74:20,24 75:13	98:19,21 99:6,8	96:12,13,17,20,23	48:7,15 54:8,12
including 137:13	78:23 80:9,16	100:3,4,7 103:4	96:24 99:23 100:7	54:20,24 55:21
137:13	83:6,19 84:5	103:24 104:13	103:4 105:4 106:9	56:1 57:5,12
incorporate 119:3	93:13 96:7 99:13	105:4,10 109:16	108:2 119:15	69:11,15,23 70:17
120:3 125:7	99:16,20 100:1	110:15 111:5	124:11,12 150:17	71:22 73:6,12,14
incorporated 42:21	101:7,17,22	113:23 123:21	150:18	74:24 117:17
55:21	103:15 105:5,21	131:25 132:7	issued 93:9	
incorporates 42:3	106:8,24,25	137:2	issues 75:15 76:24	K
82:2	107:15,17,25	intend 85:13	91:5 96:18 108:21	Katherine 2:4
incorporating 50:4	109:25 110:22	intended 105:12,23	109:15 110:18	80:18
incorporation	113:8,11 115:14	interaction 83:16	113:13,22,24	katherine.keatin
37:25 41:18,24	116:24 117:3	interchangeably	130:6 138:5 139:5	2:7
indemnification	128:11,19 132:4	22:24	issuing 82:7	Keating 2:4 80:7
129:4	132:25 136:24	interested 145:19	it'd 144:23	ked@dukeevett
indemnity 81:17	139:10 143:21	153:11	it'll 80:18	2:13
independent 58:8	144:3,6,11,18	interfacing 148:16	Item 147:18	Keely 2:10 138:18
109:23	145:18,21 146:11	interference 68:5	items 22:4 128:10	keep 109:20
independently 57:5	146:19,20 147:2	interlinking 122:7		kind 12:11 25:3
INDEX 3:3,10 4:3	148:1,11,25 149:5	intermediate	J	52:4 56:21 58:3,6
indicated 63:14	149:15,19 150:3	126:21	J-e-n-n-i-f-e-r 5:15	60:20 68:5 86:22
68:12 144:23	150:12 151:4,25	Interrogatory	Jennifer 1:13 3:1	92:21 95:7 98:16
indicating 73:21	information-as-a	11:19 136:16	4:1 5:6,15 19:19	99:20,21,22
3 . 2 .			121:22 153:5	111:18 113:22
	<u> </u>	<u> </u>	<u> </u>	<u> </u>

30(b)(6) Jennifer Dvorak

1				1 ago 10-1
132:10 135:2	136:21 137:1,13	75:23 77:14,21	long 16:23 17:7,13	66:2 67:17 69:11
139:11 149:23	137:20,24 138:1,9	78:12,12,21 79:1	56:22 62:12 135:2	69:16,23 70:18
kiosk 133:12,25	138:14 139:4,9,10	79:7	long-term 121:2	74:25 92:13,22
134:13	141:1 145:19	letterhead 78:6	look 16:6,13 17:20	93:7 94:6 99:7
kiosks 133:3	146:8 147:10	letters 77:18	23:10,11,16 24:16	111:7,12 112:18
134:11,24	148:11,19	level 15:10 17:15	50:16 54:11,14	113:2,20 115:17
Kiteworks 44:7	knowing 144:18	48:8 51:23 52:19	55:8 58:9 68:25	115:18 117:17
knew 96:6 135:23	knowledge 7:4,5,7	54:9 66:11 67:20	77:23 80:8,18	120:12 143:8,16
know 7:6,12,14 8:5	8:22 10:25 18:15	lieu 51:5	82:5 106:14	147:4 151:19,24
8:15,23,24 9:2,11	18:16 22:16 45:14	liked 99:4,13	115:13 144:25	manager 14:1,4
10:25 14:8 16:5,7	62:25 94:8 125:3	likelihood 57:25	147:18	20:15 23:16 48:7
16:15 17:14 19:4	125:24 136:1,7	58:10,12,21,22	looked 10:18 25:6	71:7,17,18,23
20:23 21:11,16	137:5 142:6	59:8,12,18 60:6	looking 11:15	73:6,12,15 93:3
22:11 24:3,3,5		60:17 61:1 75:12	36:19 51:4 53:11	101:6 103:23
27:4 28:10 29:8	L	100:3	55:15 58:5,7 59:7	109:3,7 115:21
29:14 31:8 32:21	lack 60:2 96:13,24	limited 7:5 8:21	66:4 75:16 84:15	manages 51:25
32:21 33:15,18	98:6,6,7 117:2,2	52:24 80:12 114:3	100:18 105:7	managing 52:16
37:13 38:6 39:2	121:7	134:7 142:2	107:3 139:8	manipulate 93:1
40:7,16 44:18	landed 59:16 61:3	line 9:11 14:8 18:19	looks 17:25 18:4	103:22 114:13
45:8,15,21 46:1,2	language 129:3	link 25:6	lookup 41:8	manipulated 94:4
46:17,19,21,22,23	late 16:24	linked 119:9,14	loss 58:9,10,19	104:11
46:23 47:9,16	law 5:19	list 3:14 57:8,11	100:2	manipulation
48:3 49:8,11,21	laws 60:12	135:12 137:15	lot 40:7 49:8 87:20	92:21 94:5 151:23
49:24 50:6 52:22	lawsuit 7:1 9:24	little 24:19 35:4	103:1 106:24	manner 85:4
54:17 57:2 59:17	12:8	38:9 58:5 62:5	136:22	MARICOPA 5:1
59:21 62:25 64:7	lawsuits 12:11	74:21 83:21	low 54:16 57:17,21	marked 5:4 15:9
64:9 65:8,23	layer 52:10	110:14 120:10	lump 142:24	42:19 55:20
66:19 67:4,4,25	layers 31:15 93:18	146:9,9	lying 99:19	106:21,23
68:3 69:18 75:17	lead 40:24 92:24	LLP 2:5		marketing 23:12
76:16 77:1,11,17	leads 29:11	local 25:17	M	master's 17:16,18
78:1,11,15 85:25	learned 13:8	located 133:3	M 5:11 141:22	material 135:19
87:3,13 92:2,18	learning 66:1	location 80:12	149:12 151:9	matrix 53:21
94:5,9 95:11,14	left 25:9	log 29:5,6 95:3,12	magistrate 142:12	matters 8:24 19:7
95:19,21,22,24	left-hand 56:9	112:19,21,23,25	main 40:9	mean 11:6 25:10
99:21 100:2,3	140:14	113:6	maintained 77:4	28:5,22 32:15
101:20 102:6,11	legal 9:19 29:7	log-in 4:7 29:15	major 11:7 46:25	38:12 71:14 82:10
106:5 107:16,25	36:13 120:6	52:25 96:7 111:24	manage 51:13,14	84:20 91:18 98:5
109:3,20,24 110:2	121:20	111:25,25 112:9	52:7,8 61:16	99:24 102:8
110:16,20,21,21	Leighton 2:5 5:19	112:19 116:24	management 12:3	107:17 108:23
110:22,24 112:13	let's 47:24 53:14	logged 29:4,12,17	13:15 17:19 31:2	121:12 122:20
113:1,25 114:8	61:7 68:9 83:1	logging 28:23,24	34:14,19 35:6,9	127:7 133:8 136:5
119:19 122:12	97:22 105:5 127:2	31:19 51:13 72:20	35:16 40:5 48:16	meaning 100:22
123:23 125:24,25	letter 15:15,16,18	logging-in 30:3	50:24 51:7 53:3	152:2
126:13 130:19	34:22,25 38:3,11	logo 15:21	54:8,12,20,24	means 35:8 101:10
132:12 133:9	43:18,20 73:20	logs 29:24	55:21 56:1 57:5,9	130:15
	74:12,13 75:2,4,6	-	57:12 63:2 65:19	
	I		I	<u> </u>

30(b)(6) Jennifer Dvorak

meant 100:24			l	1	
meeting 20:15 89.4 102:25 102:25 17:12.25,25 34:13 35:6,8,10 102:24 23:19 45:25 102:25 124:18 131:12 13:16 35:24 149:12 151:9, 9 135:16 137:4,6 169:18 135:25 106:23 132:54 149:12 151:9, 9 121:1,14 122:23 149:12 151:9, 9 103:14 105:8 106:23 13:25 44:23 48:19 106:23 13:25 44:23 48:19 100:10 131:20 13:20	meant 100:24	87:23	multi-sentence	93:16 110:10	135:14 136:11,13
meeting 20:15 89:4 meeting 10:25 mem(edukeevett 23:19 45:25 mem(edukeevett 2:14 members 41:3 memb 65:4 127:3 memb 65:4 127:3 mem 65:4 127:3 mem 65:4 127:3 mem 65:4 127:3 mistake 85:12 mittealed 137:4.6 mitigated 137:4.6 mitigates 130:24 mit 37:7 41:6 memorandum 3:22 19:18 53:9 56:19 103:14 105:8 106:23 mix 37:7 41:6 mention 107:22 5112:8 116:11 social 107:22 5112:8 116:11 social 107:22 112:8 116:11 social 107:22 112:8 116:11 social 107:22 112:8 116:11 social 107:22 24:25 73:11 82:8 methodology 59:11 60:8 methodology 59:11 60:8 mim 25:15 minimal 66:9 100:1 minor 60:9 moit or 60:9 minor 60:9 miscommunicati 103:1 morning 10:2 move 13:4 48:24 montior 19:9 minor 60:9 miscommunicati 103:1 minoring 9:9 miscomfigurations 97:15 misconfigurations 97:15 misconfigure 85:17 misconfigure 85:2 minor 97:15 misconfigure 85:1 misconfigure 85:1 misconfigure 85:1 misconfigure 85:1 misconfigure 85:1 misconfigure 85:1 minor 96:19 minor 96:19 minor 96:10 minor 9			,,	*	
misspace 10:16	,		<u> </u>		
23:19 45:25 mem@dukevett 96:18 N 2:15:11,11 64:3 misstates 47:13 mistates 47:13 mistates 48:12 mistates 48:12 mistates 130:24 mitigates 130:24 mistates 130:24	<u> </u>				numbers 6:15 41:4
Month Mont	<u> </u>	_	124:18 131:12	*	0
2:14			N		
members 41:3 memo 56:4 127:3 memo 56:4 127:3 mistake 85:12 mitigated 137:4,6 memorandum 3:22 19:18 53:9 56:19 mitigates 130:24 mitigates 130:24 mix 37:7 41:6 mitigates 130:24 mix 37:7 41:6 moreorandum 25:15 103:14 105:8 106:23 masc 57:15 128:18 16:11 mention 107:22 50:12 53:8 57:15 123:36:9 116:9 100:10 131:20 mertly 10:21 mert 11:3,7 20:22 met 11:3,7 20:22 24:25 73:11 82:8 methodology 59:11 60:8 methodology 59:11 60:8 minutes 13:6 38:8 minutes 42:10 misconfiguration 82:22 83:13,18 84:911 88:5,11 90:90:9 move 13:12:23 moved 12:2 76:12 misconfigurations 97:15 misconfigured 85:4 147:15 misconfigured 85:4 147:15 Newada's 25:5 82:2 misconfigured 85:4 147:15 Newada's 25:5 82:2 misconfigured 85:4 147:15 Newada's 25:5 82:2 minutes 93:3 moved 12:2 76:12 misconfigured 85:4 147:15 Newada's 25:5 82:2 minutes 93:3 moved 12:2 76:12 misconfigured 85:4 147:15 Newada's 25:5 83:7 90:3 106:14 15:3 names 70:10 names 70		,			
mem 56:4 127:3 151:6 memorandum 3:22 19:18 53:9 56:19 memorandum 3:22 19:18 53:9 56:19 81:5,10 93:9 mit gated 137:4,6 mitigated 137:4,6 mitigated 130:24 size 100:32 3:25 44:23 48:19 mention 107:22 50:21 53:8 57:15 112:8 116:11 50:10 131:20 moderate 54:16 50:10 57:17 60:9 moderate 54:16 moderate 54:16 moderate 54:16 moment 15:6,25 24 mitigated 59:16 moment 15:6,25 2 moment 15:6,25 mitigated 59:16 moment 15:6,25 mo			*		
151:6			*	,	
memorandum 3:22 mitigated 137:4,6 83:6,6 153:17 151:3 ooth 5:7 ooth 5:7 object 14:21 21:2 ooth 5:7 object 14:21 21:2 ooth 5:7 object 14:21 21:2 ooth 5:7 ooth 5:7 object 14:21 21:2 object 14:21:2 11:2 obje				,	
19:18 53:9 56:19			· ·		
81:5,10 93:9		0	,		
103:14 105:8 106:23 33:25 44:23 48:19 narrow 91:24 nature 30:18 112:6 112:8 116:11 59:10 67:16.24 necessarily 7:5 60:19 79:8 90:18 103:9 105:20 151:85 17 103:1 methodology 59:11 60:8 metric 57:24 momentarily 7:10 momentarily 7:10 minimal 66:9 100:1 misconfiguration 82:22 83:13,18 84:9,11 88:5,11 90:9 misconfigurations 97:15 misconfigurations 97:15 misconfigure 85:17 misconfigure 8		O			•
Tobic Tobi	· · · · · · · · · · · · · · · · · · ·		· -		
mention 107:22 50:21 53:8 57:15 nature 30:18 112:6 64:13 87:11 91:3 96:16 112:8 116:11 59:10 67:16,24 60:7 73:9 97:19 60:19 79:8 90:18 100:10 131:20 nocessarily 7:5 noconfidential 111:20:115:23 32:2 36:9 116:9 100:10 131:20 moderate 54:16 150:17 nondoifsclosure 127:23 133:19 merely 101:21 57:17 60:9 modern 25:13 Molly 2:10 necessary 8:7 necessary 8:7 nondusclosure 107:24 nonpublic 58:16 25:5 103:25 metric 57:24 moment 15:6,25 16:19 70:20 38:11,16 48:24 46:10 80:20 87:17 85:4 Nos 5:4 Nos 6:4 10:4:					
112:8 116:11 59:10 67:16;24 69:7 73:9 97:19 100:10 131:20 moderate 54:16 75:17 60:9 modern 25:13 moment 15:6;25 24:25 73:11 82:8 methodology 59:11 60:8 moment 15:6;25 16:19 70:20 moderate 54:16 16:19 70:20 moment arily 7:10 modeld 59:16 migrates 93:6 mind 28:7 75:15 minimal 66:9 100:1 minor 60:9 minute 13:6 38:8 minute 32:0 83:13,18 minute 32:2 83:13,18 84:9,11 88:5,11 90:9 misconfiguration 82:22 83:13,18 84:9,11 88:5,11 90:9 misconfigurations 97:15 misconfigure 85:17 misconfigure 85:4 147:15 Nevada's 25:5 mecessarily 7:5 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:19 79:8 90:18 60:10 79:20 moderate 54:16 70:22 70:22 70:22 70:22 70:22 70:23 13:3:19 70:24 70:22 70:22 70:22 70:22 70:22 70:22 70:23 13:19 70:24 70:22				_	
mentioned 13:7 69:7 73:9 97:19 60:19 79:8 90:18 nonconfidential 117:6 118:15 32:2 36:9 116:9 100:10 131:20 103:9 105:20 nondisclosure 125:21 126:25 merely 101:21 modera 25:13 modern 25:13 need 8:15,16 9:2 nondisclosure 127:23 133:19 methodology 59:11 moment 15:6,25 16:19 70:20 38:11,16 48:24 nonpublic 58:16 108:15 114:5 metric 57:24 momentarily 7:10 Monday 5:2 monitor 95:9 38:11,16 48:24 Nos 5:4 Nos 5:4 138:7 migrates 93:6 monitor 95:9 month 14:2 57:1 morning 10:2 noted 68:7 74:17 119:16 notes 54:14 104:14 119:25 minor 60:9 move 13:4 48:24 needs 31:25 107:13 negative 105:16 negligible 60:9 netice 3:12 5:25 6:2 notice 3:12 5:25 6:2 131:1,11 134:6,19 miscomfiguration 82:22 83:13,18 moved 12:2 76:12 33:6,8 netither 42:2,2,3 notified 21:19 noticed 5:23 notified 21:19 obligation 65:13 81:17 144:9 objoiously 130:6 misconfigurations moving 37:15 38:7 63:12 81:6 9					
103:9 105:20		· ·		\cup	
143:24 moderate 54:16 150:17 nondisclosure 127:23 133:19 merely 101:21 moderate 54:16 57:17 60:9 necessary 8:7 need 8:15,16 9:2 107:24 nonpublic 58:16 48:23 83:19 84:11 127:23 133:19 objection 30:19 63:5 103:25 103:25 103:25 103:25 103:25 103:25 107:24 nonpublic 58:16 82:23 83:19 84:11 85:4 Nonpublic 58:16 82:23 83:19 84:11 85:4 Nonpublic 58:16 82:23 83:19 84:11 85:4 Nos 5:4					
merely 101:21 57:17 60:9 necessary 8:7 107:24 objection 30:19 met 11:3,7 20:22 24:25 73:11 82:8 Molly 2:10 med 8:15,16 9:2 107:24 nonpublic 58:16 63:5 103:25 methodology 59:11 Molly 2:10 moment 15:6,25 12:12 16:5 27:23 82:23 83:19 84:11 108:15 114:5 metric 57:24 moment arily 7:10 Monday 5:2 momentarily 7:10 Monday 5:2 Monday 5:2 Monday 5:2 Montoring 99:9 Montoring 99:9 Month 14:2 57:1 monitoring 99:9 month 14:2 57:1 month 14:2 57:1 month 14:2 57:1 moreded 57:9 96:6 120:10 noted 68:7 74:17 119:16 88:6,15 91:8 92:8 minute 13:6 38:8 58:21 60:5 82:11 86:8 105:3,6 needing 80:5					
met 11:3,7 20:22 modern 25:13 modern 25:13 med 8:15,16 9:2 nonpublic 58:16 63:5 103:25 methodology 59:11 60:8 16:19 70:20 moment 15:6,25 16:19 70:20 38:11,16 48:24 Nope 36:24 118:24 119:16 metric 57:24 momentarily 7:10 Monday 5:2 monitor 95:9 46:10 80:20 87:17 Nos 5:4 138:7 migrates 93:6 monitor 95:9 monitoring 99:9 monitoring 99:9 month 14:2 57:1 month 14:2 57:1 moedd 57:9 96:6 120:10 noted 68:7 74:17 138:10 47:21 87:24 minute 13:6 38:8 minute 3:6 38:8 58:21 60:5 82:11 needd 57:9 96:6 120:10 notes 54:14 noteworthy 81:22 121:10 122:18 122:10 122:18 123:8 126:3,8 123:8 126:3,8 123:8 126:3,8 131:1,11 134:6,19 123:4 notice 3:12 5:25 6:2 131:1,11 134:6,19 153:8 65:9,11 obligated 49:5,19 65:9,11 obligation 65:13 81:17 144:9 0bligation 65:13 135:22,24 139:3 0ccur 24:8 0ccur 24:8 0ccur 24:8 0ccur 24:8 0ccurring 58:22					
24:25 73:11 82:8 methodology 59:11 60:8 metric 57:24 middle 59:16 migrates 93:6 migrates 93:6 minimal 66:9 100:1 minimal 66:9 100:1 minimal 66:9 100:1 minimal 66:9 100:1 minimates 42:10 miscommunicati 108:15 114:5 129:5 34:25 38:7 38:11,16 48:24 64:10 80:20 87:17 95:21 104:7 145:8 148:24 149:4 needed 57:9 96:6 120:10 needing 80:5 needing 80:5 needing 80:5 needed 57:9 96:6 120:10 needing 80:5 notice 3:12 5:25 6:2 nothing's 108:24 notece 54:14 noteworthy 81:22 nothing's 108:24 notice 3:12 5:25 5:25 153:8 notified 21:19 31:27:14 149:9 0bligation 65:13 81:17 144:9 0bligation 65:13 81:17 144:9 0btaining 65:15 obviously 130:6 135:22,24 139:3 0eccurred 93:24 0eccurred 93:24 0ecurring 58:22			•		•
methodology 59:11 moment 15:6,25 29:5 34:25 38:7 85:4 Nope 36:24 118:24 119:16 metric 57:24 moment arily 7:10 Monday 5:2 moment of 4:10 80:20 87:17 Nos 5:4 Nos 5:4 <th>*</th> <th></th> <th>*</th> <th></th> <th></th>	*		*		
60:8 metric 57:24 metric 57:24 middle 59:16 migrates 93:6 migrates 93:6 mind 28:7 55:15 135:1 minor 60:9 minute 13:6 38:8 minute 13:6 38:8 minute 42:10 miscommunicati 103:1 misconfiguration 82:22 83:13,18 84:9,11 88:5,11 90:9 misconfigurations 97:15 misconfigured 85:4 monitor 95:9 monitor 195:9 monitor 195:10 monitor 195:10 monitor 195:10 monitor 195:10 monitor 195:10 monitor 195:10 monitor					
metric 57:24 middle 59:16 middle 59:16 migrates 93:6 migrates 93:6 mind 28:7 55:15 135:1 month 14:2 57:1 minimal 66:9 100:1 minor 60:9 move 13:4 48:24 minute 13:6 38:8 minute 13:6 38:8 minute 42:10 miscommunicati 103:1 misconfiguration 82:22 83:13,18 84:9,11 88:5,11 90:9 misconfigurations 97:15 misconfigured 85:4 minute 47:15 64:10 80:20 87:17 95:21 104:7 145:8 148:24 149:4 noted 68:7 74:17 119:16 noted 68:7 74:17 119:16 notes 54:14 noteworthy 81:22 nothing's 108:24 notice 31:25 107:13 noteworthy 81:22 nothing's 108:24 notice 3:12 5:25 6:2 nothing's 108:24 noticed 5:23 notified 21:19 31:6,12 15:23 notified 21:19 31:6,12 15:23 notwithstanding 123:4 138:7 objections 7:22 31:10 47:21 87:24 88:6,15 91:8 92:8 1104:7 145:8 Noted 68:7 74:17 119:16 noteworthy 81:22 nothing's 108:24 notice 5:23 notified 21:19 31:1,11 134:6,19 15:8 notwithstanding 123:4 Notember 1:23 5:2 153:8 notwithstanding 123:4 Notember 1:23 5:2 153:17 notwithstanding 123:4 Noted 68:7 74:17 119:16 noteworthy 81:22 nothing's 108:24 notice 3:12 5:25 6:2 notwithing 123:4 noticed 5:23 notified 21:19 31:0,11 134:6,19 noticed 5:23 notified 21:19 notwithstanding 123:4 Notember 1:23 5:2 153:17 notwithstanding 123:4 Noted 68:7 74:17 119:16 noteworthy 81:22 nothing's 108:24 notice 3:12 5:25 6:2 nothing's 108:24 noticed 5:23 notified 21:19 noticed 5:23 notified 21:19 notwithstanding 123:4 Noted 68:7 74:17 noticed 5:23 nothing's 108:24 notice 3:12 5:25 6:2 nothing's 108:24 noticed 5:23 notified 21:19 noticed 5:23 notified 21:19 notwithstanding 12:2 nothing's 108:24 noticed 5:23 notified 21:19 noticed 5:23 notwithstanding 12:2 nothing's 108:24 noticed 5:23 notified 21:19 noticed 5:23 notwithstanding 12:2 nothing's 108:24 noticed 5:23 notified 21:19 noticed 5:23 notwithstanding 12:2 nothing's 108:24 noticed 5:23 notwithest and in the provided in the provided in the provided in the provided in					
middle 59:16 Monday 5:2 95:21 104:7 145:8 Notary 153:3 objections 7:22 middle 59:16 Monday 5:2 monitor 95:9 monitor 95:9 monitoring 99:9 148:24 149:4 needed 57:9 96:6 119:16 noted 68:7 74:17 119:16 86:6,15 91:8 92:8 minute 13:6 38:8 monitoring 10:2 move 13:4 48:24 needing 80:5 needing 80:5 noteworthy 81:22 121:10 122:18 123:8 126:3,8 minutes 42:10 86:8 105:3,6 negligible 60:9 negotiate 122:23 6:12 7:3 8:25 9:17 obligated 49:5,19 misconfiguration 82:22 83:13,18 moved 12:2 76:12 33:6,8 31:25 32:16 77:15 notwithstanding obligation 65:13 81:17 144:9 obligation 65:15 obviously 130:6 misconfigurations moving 37:15 38:7 63:12 81:6 98:15 Nevada 24:23 November 1:23 5:2 135:17 number 9:23 11:15 occurred 93:24 misconfigured 85:4 147:15 Nevada's 25:5 Nevada's 25:5 83:7 90:3 106:14 occurring 58:22			· ·		
migrates 93:6 mind 28:7 55:15 135:1 monitor 95:9 month 14:2 57:1 month 14:2 51:10 122:18 month 14:2 5:2 5:2 6:2 month 15:3 in month 12:2 in month 14:2 5:2 5:2 6:2 month 14:2 5:2 5:2 5:2 6:2 month 15:4 in month 14:2 57:1 month 14:2 57:1 month 14:2 57:1 month 14:2 5.1 in month 14:2 57:1 month 14:2 5.1 in month 14:2 57:1 month 14:2 14:10 122:18 month 14:2 5:10:10 12:10 month 14:2 5:10:10 12					
mind 28:7 55:15 monitoring 99:9 needed 57:9 96:6 119:16 88:6,15 91:8 92:8 minimal 66:9 100:1 morning 10:2 morning 10:2 needing 80:5 noteworthy 81:22 121:10 122:18 minute 13:6 38:8 minute 13:6 38:8 58:21 60:5 82:11 needing 80:5 needing 80:5 notice 3:12 5:25 6:2 noting's 108:24 notice 3:12 5:25 6:2 131:1,11 134:6,19 miscommunicati 103:1 147:16 149:24,25 negotiate 122:23 9:17 obligated 49:5,19 misconfiguration 82:22 83:13,18 moved 12:2 76:12 33:6,8 neither 42:2,2,3 notified 21:19 0bligation 65:13 84:9,11 88:5,11 90:9 151:23 notwithstanding 123:4 notwithstanding 123:4 notwithstanding 135:22,24 139:3 97:15 63:12 81:6 98:15 105:1 120:18 Nevada 24:23 153:17 number 9:23 11:15 occurr 24:8 misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurring 58:22					•
minimal 66:9 100:1 month 14:2 57:1 120:10 notes 54:14 104:14 119:25 minor 60:9 move 13:4 48:24 needing 80:5 needs 31:25 107:13 noting's 108:24 123:8 126:3,8 minute 13:6 38:8 58:21 60:5 82:11 negative 105:16 negligible 60:9 negligible 60:9 notice 3:12 5:25 6:2 131:1,11 134:6,19 miscommunicati 103:1 147:16 149:24,25 150:6 negotiate 122:23 nether 42:2,2,3 notified 21:19 obligated 49:5,19 misconfiguration 82:22 83:13,18 90:9 moved 12:2 76:12 92:22 111:6,12 151:23 neither 42:2,2,3 107:13 153:10 notwithstanding 123:4 notwithstanding 123:4 November 1:23 5:2 notwithstanding 13:22 notwithstanding 123:4 notwithstanding 133:17 n	C		needed 57:9 96:6		88:6,15 91:8 92:8
minimal 66:9 100:1 morning 10:2 needing 80:5 noteworthy 81:22 121:10 122:18 minute 13:6 38:8 minute 13:6 38:8 58:21 60:5 82:11 needing 80:5 nothing's 108:24 123:8 126:3,8 minutes 42:10 86:8 105:3,6 negligible 60:9 negligible 60:9 notice 3:12 5:25 6:2 131:1,11 134:6,19 misconfiguration 82:22 83:13,18 90:9 moved 12:2 76:12 92:22 111:6,12 151:23 notified 21:19 33:6,8 notwithstanding 107:13 153:10 notwithstanding 123:4 notwithstanding 12:2 notwithstanding 123:4 November 1:23 5:2 15:22,24 139:3 nocur 24:8 Nevada 24:23 15:15 number 9:23 11:15 number 9:23 10:14			120:10		104:14 119:25
minor 60:9 move 13:4 48:24 needs 31:25 107:13 nothing's 108:24 123:8 126:3,8 minute 13:6 38:8 minutes 42:10 86:8 105:3,6 negligible 60:9 negotiate 122:23 notice 3:12 5:25 6:2 131:1,11 134:6,19 miscommunicati 103:1 147:16 149:24,25 negotiate 122:23 9:17 obligated 49:5,19 misconfiguration 82:22 83:13,18 moved 12:2 76:12 neither 42:2,2,3 notified 21:19 obligation 65:13 84:9,11 88:5,11 92:22 111:6,12 neither 42:2,2,3 notwithstanding 123:4 notwithstanding misconfigurations 63:12 81:6 98:15 Nevada 24:23 November 1:23 5:2 135:22,24 139:3 misconfigure 85:17 105:1 120:18 Nevada's 25:5 Nevada's 25:5 83:7 90:3 106:14 occurred 93:24			needing 80:5		121:10 122:18
minute 13:6 38:8 58:21 60:5 82:11 negative 105:16 negligible 60:9 notice 3:12 5:25 6:2 131:1,11 134:6,19 miscommunicati 103:1 127:10 129:19 negotiate 122:23 9:17 obligated 49:5,19 misconfiguration 82:22 83:13,18 84:9,11 88:5,11 90:9 moved 12:2 76:12 151:23 33:6,8 neither 42:2,2,3 107:13 153:10 notwithstanding 123:4 notwithstanding 123:4 notwithstanding 135:22,24 139:3 notwing 37:15 38:7 November 1:23 5:2 131:1,11 134:6,19 153:8 Moving 37:15 38:7 misconfigure 85:17 misconfigured 85:4 150:6 notified 21:19 153:8 notified 21:19 153:4 notwithstanding 123:4 notwithstanding 135:22,24 139:3 notwithstanding 135:22,24 139:3 notice 3:12 5:25 6:2 15:25 6:2 notified 21:19 153:8 notified 21:19 153:4 notwithstanding 123:4 notwithstanding 123:4 notwithstanding 135:22,24 139:3 notwithstanding 123:4 notwithstanding 123:4 <th></th> <th>O</th> <th>needs 31:25 107:13</th> <th></th> <th>123:8 126:3,8</th>		O	needs 31:25 107:13		123:8 126:3,8
minutes 42:10 86:8 105:3,6 negligible 60:9 6:12 7:3 8:25 153:8 miscommunicati 127:10 129:19 negotiate 122:23 9:17 obligated 49:5,19 misconfiguration 82:22 83:13,18 moved 12:2 76:12 negotiating 32:24 notified 21:19 obligation 65:13 84:9,11 88:5,11 90:9 misconfigurations 92:22 111:6,12 neither 42:2,2,3 notwithstanding obtaining 65:15 misconfigure 85:17 63:12 81:6 98:15 Nevada 24:23 November 1:23 5:2 135:22,24 139:3 misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurred 93:24			negative 105:16	<u> </u>	131:1,11 134:6,19
miscommunicati 127:10 129:19 negotiate 122:23 9:17 obligated 49:5,19 103:1 147:16 149:24,25 150:6 negotiating 32:24 noticed 5:23 65:9,11 82:22 83:13,18 moved 12:2 76:12 33:6,8 31:25 32:16 77:15 81:17 144:9 84:9,11 88:5,11 92:22 111:6,12 neither 42:2,2,3 notwithstanding 81:17 144:9 90:9 151:23 notwithstanding 123:4 notwithstanding 123:4 97:15 63:12 81:6 98:15 Nevada 24:23 November 1:23 5:2 135:22,24 139:3 97:15 63:12 81:6 98:15 Nevada 24:23 153:17 number 9:23 11:15 misconfigure 85:17 105:1 120:18 44:25 number 9:23 11:15 Necurred 93:24 misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurring 58:22	minutes 42:10		negligible 60:9		153:8
103:1 147:16 149:24,25 122:24 noticed 5:23 65:9,11 misconfiguration 82:22 83:13,18 moved 12:2 76:12 33:6,8 31:25 32:16 77:15 81:17 144:9 84:9,11 88:5,11 92:22 111:6,12 neither 42:2,2,3 notwithstanding 123:4 notwithstanding 97:15 moving 37:15 38:7 network 71:8 November 1:23 5:2 135:22,24 139:3 misconfigure 85:17 105:1 120:18 44:25 number 9:23 11:15 occurred 93:24 misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurring 58:22		,	negotiate 122:23		obligated 49:5,19
misconfiguration 150:6 negotiating 32:24 notified 21:19 obligation 65:13 82:22 83:13,18 92:22 111:6,12 33:6,8 31:25 32:16 77:15 81:17 144:9 90:9 151:23 neither 42:2,2,3 notwithstanding 0btaining 65:15 misconfigurations moving 37:15 38:7 network 71:8 November 1:23 5:2 135:22,24 139:3 97:15 63:12 81:6 98:15 Nevada 24:23 153:17 number 9:23 11:15 misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurred 93:24	103:1	147:16 149:24,25	122:24	noticed 5:23	65:9,11
82:22 83:13,18 moved 12:2 76:12 33:6,8 31:25 32:16 77:15 81:17 144:9 84:9,11 88:5,11 92:22 111:6,12 neither 42:2,2,3 notwithstanding 123:4 notwithstanding 135:22,24 139:3 misconfigure 85:17 63:12 81:6 98:15 Nevada 24:23 153:17 number 9:23 11:15 number 9:23 11:15 number 9:23 11:15 number 9:23 106:14 number 9:23 106:14	misconfiguration	· ·	negotiating 32:24	notified 21:19	obligation 65:13
90:9	C	moved 12:2 76:12	33:6,8	31:25 32:16 77:15	81:17 144:9
misconfigurations moving 37:15 38:7 network 71:8 November 1:23 5:2 135:22,24 139:3 97:15 63:12 81:6 98:15 Nevada 24:23 153:17 occur 24:8 misconfigure 85:17 105:1 120:18 44:25 number 9:23 11:15 occurred 93:24 misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurring 58:22	84:9,11 88:5,11	92:22 111:6,12	neither 42:2,2,3	notwithstanding	
97:15 63:12 81:6 98:15 Mevada 24:23 153:17 occur 24:8 occurred 93:24 occurring 58:22				\mathcal{C}	•
97:15 63:12 81:6 98:15 Nevada 24:23 153:17 occur 24:8 misconfigure 85:17 105:1 120:18 44:25 number 9:23 11:15 occurred 93:24 occurring 58:22	misconfigurations	moving 37:15 38:7		November 1:23 5:2	,
misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurring 58:22	_	C		153:17	
misconfigured 85:4 147:15 Nevada's 25:5 83:7 90:3 106:14 occurring 58:22	misconfigure 85:17	105:1 120:18		number 9:23 11:15	
never 15:4 29:4,16 59:18 115:3	misconfigured 85:4	147:15		83:7 90:3 106:14	_
ı ı ı ı ı			never 15:4 29:4,16		59:18 115:3
		l	I	I	I

30(b)(6) Jennifer Dvorak

				1 490 100
occurs 26:4	39:13,16,21 40:6	40:23 84:22,24	91:11,12,20 92:3	56:13
October 20:22	40:10,15 41:2,15	91:5 94:21 120:20	92:11 93:9,12	Paisner 2:5 5:19
odd 145:23	42:17 43:17,23	one's 84:20	99:11 101:22,23	paper 102:9
Odyssey 4:7,8 14:8	44:5,10,13,20	ones 119:1	102:1,2,8,10,11	paragraph 34:12
40:4 50:13 62:19	45:6,16,22 46:3	ongoing 19:6 43:8	103:9,9,21 104:11	34:13,15,17 37:19
149:17,21 150:5	47:2,7,12,14,24	online 133:18	110:3,24 114:2	38:10 61:13 68:9
151:12,13,15	48:6,13 50:2	open 86:7 111:16	123:14 137:3	71:5 81:6,9 82:19
offering 23:17 62:4	52:11 53:14,14,23	111:17 151:22	152:2,3 153:13	94:17,17 97:4,4
67:4,18 147:17	54:4,7,15,20 55:2	open-loop 123:22	out-of-the-box	parameters 97:8
office 8:24 31:24	55:10,17 56:1,4	operate 87:9	140:15	parent-child 86:25
32:15 33:1,12	56:15,18,21 57:4	operates 86:15	outages 108:24	124:19
37:9 42:21 43:21	57:23 59:7 61:7	143:11	outcome 153:11	part 15:2 23:9,18
45:7,11,16 46:4	61:22 62:1,5 63:9	operating 52:7	outline 147:13	29:21 33:20 34:13
46:14,18,22 65:1	64:16 66:17 67:14	91:1,6 92:1	outlined 110:11	34:18 35:2,6,10
77:25 78:10,11,20	67:19 68:7 69:12	opportunity 9:3	111:19 127:8	35:11 36:2 37:21
121:17 126:20	69:25 70:6,13,20	33:20 45:17	outright 146:10	38:7,25 39:5
132:18	71:16,21 72:8,25	118:20 119:23	outset 141:2,3	44:16 47:15 50:17
office's 41:15	73:4 76:21 77:6	opposed 25:18 60:2	outside 49:5 62:3	51:2,15,25 55:13
Officer 16:22 18:4	77:17,20,23 78:9	96:13 132:19	125:22 130:7	57:7 65:6,17,19
18:5 30:20 147:3	78:19,25 79:13,17	option 127:7 128:4	outstanding 136:25	66:5,10 68:18
148:25	81:12,20 82:18	128:6,7 129:12	overall 57:7	69:10,21,23 70:8
official 1:7 5:22	83:21 84:3,8 85:1	130:3,3,11,16,21	overbroad 104:14	70:12 71:19 72:6
OFS 143:9,11	85:15 87:21 88:24	131:9,24 132:9,11	130:5 138:7	74:1,6,9,17 77:13
144:9 146:15	89:5,15 90:7,15	148:22	overlap 50:10	77:15 78:17 79:18
oh 15:25 16:2 36:1	91:17 94:2,13,24	options 51:24 59:8	139:3	81:9,12,20 82:5
91:24 93:4 108:5	97:3,22 98:24	59:13 127:5,8,20	overlying 51:24	82:16 83:23
124:16 147:20	100:7 103:13	128:1 129:21,23	oversight 32:6	103:12 109:6
okay 5:13 6:20 9:16	104:18,22 113:12	132:9 147:9,15	Overstatement	112:9 117:21
10:4 11:3,9 12:4	113:21 114:11	ORAL 1:11	103:25	119:14 120:12
12:17 13:5,20,23	115:15,20 121:23	order 28:11,15	Overview 3:24 4:6	126:17 132:16
15:6,15,18,25	125:5,5,12,19	48:24 64:9 80:6,9	owns 22:15	133:1 134:4,16
16:4,11,19 17:3	126:1,11 127:2,11	80:23 107:16		140:18 141:8
17:20 18:18,24	128:13 129:8,16	122:5 132:23	<u>P</u>	particular 10:14
19:14 20:7,19,25	131:16,23 132:16	148:21,24	P 2:1,1	11:2 47:3 59:14
21:8,14,21 22:22	134:14 135:10	ordinary 146:3	p.m 5:2 42:16,16	67:13,15 118:4
23:3,5,13 24:1,21	136:11 137:15	org 17:25 18:8,13	80:3,3 135:9,9	119:5
25:22,25 26:16,19	138:25 139:20	organization 18:14	152:6	particularly 32:12
26:22 27:2,7,16	141:14,20,24	50:18,19 58:17	page 3:4,11 4:4	parties 107:23
27:20,25 28:13,19	149:10 152:4	67:9 127:14	6:24 15:20,20	151:19
29:1,16,19 30:12	Omundson 1:7	organization-spe	29:2 34:8 53:15	partners 97:7
30:16 31:21,24	2:18 5:21 13:24	67:7	56:10,10 57:17,23	party 10:11 43:14
33:16,22 34:7	on-boarded 120:22	organizational	61:8 81:5 89:6,17	44:5 68:23 153:11
35:4,25 36:5,8,14	on-premise 63:8	3:13 72:20	89:20,22 117:11	pass 66:22 84:16
36:25 37:5,9,16	once 16:16 29:1,6	organizations 51:1	117:11 127:4	132:4
37:18 38:5,8,22	29:23,23 33:23	original 55:13	147:18,21,22	patches 52:8
			pages 16:5 56:8,12	
	·	•	·	·

30(b)(6) Jennifer Dvorak

patching 52:8	Plaintiff 1:5 2:3	position 16:20,23	present-day 18:14	133:3,16 136:14
path 131:8 132:1	plan 99:15 117:20	17:9,13 41:15	presentation 140:7	137:2,17,22 138:6
paths 127:21	planning 20:25	76:9	presently 52:21	141:2,11,18 142:7
pause 11:10 13:5	51:1	positive 105:15	presents 11:17	142:11,16,21
15:7 38:8 88:20	plans 50:22	possibility 59:17	136:15	144:3,7,13 145:13
paying 105:18	platform 51:11,16	133:2 134:3,17	press 9:22 11:17,21	145:17 146:7,14
payment 40:18,18	please 5:13,14 7:17	possible 59:9,12,17	12:6,21 13:1,4,12	146:22 147:23
payments 36:20	8:5,15,17 16:7,15	59:20 60:1 61:3	13:19,21 19:10	149:9 151:14,21
37:2,2	17:20 19:16 25:2	100:3 104:5,9	21:1 22:9,17,23	presume 23:24
pen 114:22	26:17 34:17 55:8	128:10	22:23,25 23:1,3,7	pretty 46:1 81:15
pending 108:12	88:22 89:21	posture 128:16	23:21 24:10,11,17	81:18 123:19
penetration 52:5	108:13	potential 11:17	25:1,17 33:18	136:20,20
people 18:21 36:10	plenty 130:7	31:4 82:22 84:9	34:6 38:20 41:3	previous 94:8
138:15	138:14	86:1 90:8 126:21	44:25 45:5,8,8,12	106:12 120:17
per-product 72:14	PLLC 2:11	127:8 129:23	45:18 46:4,16,19	previously 32:3
percent 108:24	PO 2:12 82:7,10	130:21,24,24	46:25 47:5,17,19	47:9 72:1 141:4
130:20	point 9:3 11:4	131:4 136:15,23	48:17 53:24 56:5	prior 12:2 16:25
perfect 87:15,16	19:21 34:12 49:15	137:1,12	59:4 61:14 67:3	17:4 36:6 49:21
90:20 92:7	120:25 126:22	potentially 13:4	70:7,17,19 71:6	53:2 54:25 55:22
perform 13:25 52:6	127:16,18,20	41:17 66:15 83:7	72:24 83:9,19	62:14 92:21 99:6
57:13 139:14,17	139:9 144:24	83:18 84:16 85:25	84:12,16 85:3,6	126:22 135:23
performed 13:13	148:18 150:12,16	91:4 92:12 95:22	85:10,14,20 86:3	privileged 9:7
13:14 14:19 90:25	151:2	104:17,19 111:15	86:4,5,8,15 87:4,8	probably 19:12
performing 147:5	pointing 86:12	114:17,22 127:25	87:22 88:5,11	24:25 54:5 80:10
period 10:15	points 57:18	130:13 132:1,4,5	89:4 90:12,15	121:21
permission 76:13	portal 4:7 12:1,16	132:15 149:9	91:11 92:25 94:4	problems 116:21
permissions 114:19	25:7 26:24 39:11	151:22	94:9,25 95:10,13	proceed 150:14
116:9	40:10,12,19 41:2	power 117:2	95:19,23 96:14,19	proceeding 9:14
person 36:10 53:2	41:10,16 44:19,21	practice 77:20	98:18 100:21,23	proceedings 11:10
59:2,5 90:21	67:14 79:19 109:9	pre-assess 117:12	101:5,8,12,21	15:7 88:20 153:9
111:10 123:17	112:17,19,20,22	pre-August 136:1	102:17 103:8,20	153:13
133:20 139:2	112:23,24,25	predate 136:9	105:12 108:4,19	process 13:21
personal 7:5,7 8:22	113:10,17 115:11	preliminary 38:16	109:5,17 110:5,8	14:15 21:15 30:4
62:24 125:23	115:12,15,20,24	premarked 5:24	110:17 111:15	30:25 31:6 32:8
perspective 138:20	116:1 133:10	9:24 10:4 135:17	112:12,14,15	32:11 34:14,19
pertains 153:12	149:9	preparation 10:6	113:3,6,14 114:12	35:7,9,11,16
physical 102:9	portion 30:25	11:1 18:24 19:5	114:14 115:4,5,21	36:20 38:15 39:20
pick 101:1	40:16,17,18 41:2	61:10 81:10	116:3 117:4	43:8 44:1,2 49:16
picture 75:10	41:5,5,10 47:1	prepare 7:8 9:18	118:19 119:9	49:24,25 50:16,17
piece 41:7 116:5	69:22	56:18	121:8,18 122:2,8	51:3,7 52:16 54:1
place 14:15 49:25	portions 40:13,15	prepared 53:23	122:16 123:21	57:12 65:4,19,20
54:25 71:7 92:18	40:23,24 41:9	preparing 92:24	125:13 126:2,7	66:18 72:22,24
98:23 107:21,24	44:17	106:9	127:21 128:4,20	74:9 76:11,17
122:1,15 128:16	posed 20:11,12	present 2:16 23:20	131:21 132:2,10	77:7,7,13,15 82:5
places 86:3	100:12	127:20	132:13,14,19	82:17 96:8,10,13
•			, , -	
	<u> </u>	<u> </u>	<u> </u>	<u> </u>

30(b)(6) Jennifer Dvorak

	ī	-	-	
96:25 111:14	product-specific	77:8,21 78:6,7,23	116:19 119:8	pursuant 5:24
112:7 119:22,24	67:8	79:7 81:17 99:20	public 28:24 41:3	purview 127:18
120:3,9,18,20,21	products 14:8,16	99:25 105:13	57:21 83:9,10	push 83:18 85:13
123:4,6,23 125:11	32:7 33:7 39:13	114:25 115:15	84:17 85:21 87:6	146:9
143:19,25 150:9	39:19,21 40:1,8	116:1 117:3 130:1	91:13 92:12 94:9	pushed 85:10,14
151:6	49:8 50:9,10,11	131:8 132:1 144:3	105:19 111:3,16	put 6:3 15:11 16:14
processed 75:22	50:20 51:11 52:20	144:6 147:14	111:17 115:13,14	17:21 33:23 53:10
processes 53:4	62:2,18,19,20	148:1,8,10	123:13,13,23	69:19 73:25 76:8
57:20 117:12	64:24 65:2 67:5	provided 8:19 22:3	133:13 151:22,22	80:6 85:20 106:1
processing 34:20	67:10,22 108:4,18	23:11 43:19 47:10	153:3	135:11
73:22 75:19	115:6 116:6,22	59:15,22 64:24	public-facing 26:25	
procure 145:9	118:21 120:23	66:19 67:20 69:1	27:14,17 28:14,16	Q
procured 13:16	121:1,3 143:19	74:13,20,24 75:2	28:21 29:21,23,25	Q3 20:21 22:6
procurement	program 32:4 57:7	76:15 77:24,25	30:5,18 31:4,15	138:1
120:20,21 143:18	66:10 120:11,12	93:16 96:6 97:12	83:11,11 95:8	qualified 6:16 51:9
150:17	144:14 147:3	99:15,16,19 100:5	133:14 134:12,23	quality 76:14,21
procurement-type	148:16	100:14,15 106:25	publicly 12:1 26:12	quantify 147:14
146:13	programs 50:24	109:2 117:15	28:2,6,8 52:24	quarter 144:24
procurements	project 3:24 54:21	118:2,3 132:11	53:5 83:15 84:4	queries 101:7,14,21
121:4 150:20	promised 105:23	137:9,17,22 140:8	publicly-available	question 7:16,17
produced 6:10 7:3	106:5	151:25	83:16	8:15,19,20 12:22
9:5,23 46:13	prompt 8:6	provider 34:22	publicly-facing	20:12,17,19 24:2
138:19	prone 106:2	37:8 61:16,23	30:11	27:13 32:15 60:7
product 10:18	proof 63:23,24	62:2,19 63:10	publicly-identifia	62:21 68:19 72:12
13:15 14:5,7,11	65:25 66:4,25	73:20 77:4,16	83:5	75:8 86:11 91:10
14:20,23 22:12,14	properly 83:22	95:1 112:10	published 87:3	91:24 93:8,10,23
23:11,17 32:23	proposal 35:12	116:19,21 128:21	pull 101:7,22 149:6	95:25 100:18,19
38:15,20 39:19	36:3	148:6	pulled 92:12	100:22 102:13,24
41:16 43:25 45:3	proposed 130:10	providers 37:7	102:17 140:10	106:25 107:8
45:4 48:7,11,16	protect 81:17 111:4	62:10 77:14 79:2	pulling 11:11	108:12,13,19
48:18 49:10,17	protected 107:2	122:14	purchase 14:14,14	110:14 113:21
50:14 54:10 55:3	protecting 100:4,6	provides 30:9,13	48:25 82:13	119:24 120:1
56:1 57:14 59:15	protections 129:5	30:14 51:22,22	149:25	121:21,22 123:5
60:18,21,24 62:3	protective 80:6,9	68:24 77:18 101:5	purchased 48:16	129:14,15 131:23
66:13 67:11,12,14	80:22	101:22 103:20	48:18,22 49:17	133:6 134:15,16
67:17 69:11,16	provide 8:1,5 9:1	107:12 115:18	72:23	135:25 145:12
70:10 72:10,23	10:16 23:6,25	129:3	purchases 50:7	151:11
74:16 82:14	24:6 28:11 32:6,9	providing 38:4	121:1,14,14	questioning 69:17
108:22 109:9	32:13 34:22 38:14	74:4 98:18 105:20	122:22	questionnaire 66:22 67:2 72:19
113:17,19 115:8,9	44:4 49:6,19,20	112:13 129:21	purchasing 38:15	
115:10 117:21,23	51:3 64:12 65:9	133:2 142:5 143:4	38:17 49:14	117:18 118:2,5 120:14 128:15
118:1,6,10 122:11	65:11,21,25 66:9	145:23 146:10,18	purports 26:20	120:14 128:15
123:12 125:14	66:12,24 69:12	proving 107:19	purpose 34:25	150:2,23
127:10 131:21,22	73:4,19 74:11,22	PRT 68:16 69:20	38:11 50:4 55:2	questions 6:20,25
147:17 149:25	74:23 75:1,3,5	82:21 94:25 95:4	105:12	7:9,12,21 8:2,13
				1.7,14,41 0.4,13

30(b)(6) Jennifer Dvorak

				1 490 100
8:13,22 9:10,13	102:10,22 104:7	35:18 71:17 89:6	105:21 143:19	REPRESENTED
19:4,23 20:9,10	120:10,24	referenced 10:6	144:3,7 145:16	1:13
49:13,18 50:16,18	reason 9:1 45:22	11:18 35:23 66:12	146:7,14 153:11	request 35:12 36:3
50:19 51:12 65:20	63:18,19 64:1	67:3 91:21 136:15	relates 26:10 97:10	45:8,12,17 65:7
66:23 67:6,8,11	68:14 70:6,13	136:18	107:8 122:13	78:11,20 117:20
99:18,25 100:9,12	71:10,13	referred 93:24	relation 36:22 67:3	118:18 137:10
103:2 106:18	reasons 138:5	140:12	relationship 78:5	requested 43:17,18
107:3 117:19	recall 16:8 23:15	referring 10:20	119:10	50:2 59:16,22
119:2 128:15	54:15 145:14	22:25 23:1 37:24	relationships 87:1	60:4 64:18 67:21
136:25 141:20,25	recap 135:13	38:20 61:24 83:24	124:20	69:3,8,10,13 72:1
142:1,24 146:14	receive 29:6 59:25	84:10 90:1 105:25	relative 109:17	78:25 108:14
146:15 149:14	60:5 106:8	106:16 119:22	relevant 64:19 68:3	133:7 149:15,19
queue 9:22 11:17	received 9:21 22:8	reflect 10:5 18:13	75:24 101:20,24	150:3,12 151:4
12:6,18,21 13:1,4	31:16 60:3 63:24	48:8	101:25 103:7	153:14
13:12,21 19:11	64:19 66:8 71:22	reflected 18:22	109:25 113:25	requesting 65:15
21:1 22:10,24,25	71:23 72:2 113:9	21:16 48:9 50:5	114:4 133:16	requests 12:9,10
94:11 133:3	118:5	79:10 81:13 107:9	135:19 137:20	66:25 93:5 143:21
136:14 137:17,22	receives 124:1,25	110:17	139:11	require 33:18 39:4
138:6 141:11,18	recognize 17:22	refuse 148:10	reliant 47:3 122:11	39:13 41:11,17,24
142:7,11,16,21	20:7 26:19 27:8	refused 117:17	relies 81:23 90:20	64:9 117:3 121:15
144:4,7,13 145:14	29:2 88:24	regard 8:1 52:12	105:19	125:14,17 129:2
145:17 146:7,14	recommend 146:21	regarding 9:22	rely 51:6 87:14,16	140:3
146:22 151:14	148:12 149:20	31:17 51:21 54:24	106:9	required 31:8
queues 141:2	150:4,13 151:3	96:24 99:17	remediating 52:6	39:20 64:8 149:24
quick 35:18 42:9	recommendation	104:24	remediation	150:5
70:20 138:18	146:24 150:7	regardless 73:10	114:25	requirement 28:6
151:11	recommended	119:15 133:13	remember 69:1	38:18
quickly 88:18	148:3	regards 91:10	reminded 74:5	requirements
quite 135:14	recommending	110:23	remotely 5:1	58:18 60:12 64:15
n	131:9 149:1	register 27:24 28:7	133:18 153:6	72:5,7,9,13 73:11
R	record 5:14 8:10	28:16 29:23	renewal 41:13	74:2 82:8 111:19
R 2:1	42:14 79:23 80:5	registered 29:17	rephrase 8:16	117:13 132:3
Rackspace 44:7	106:20 108:8,9,14	98:25 112:6,13	115:25	requires 72:13
74:25	133:7 135:5,7	registers 29:24	report 18:4,11	118:19
ranked 129:22	recorded 115:19	registration 29:15	68:18,20 69:16,17	requiring 34:19
reach 28:14	153:8	30:3 31:6 111:18	70:1,3,8,11,12,15	resemble 48:8
read 34:17 82:24	recording 7:21	regular 107:2	72:17 73:13,25	reserved 152:7
95:5 107:13	records 90:2	regularly 46:1	144:12	respect 6:10 7:1
108:13,14 114:21	recover 107:20	regulatory 58:18	REPORTED 1:24	9:16 30:5,18 32:1
128:5 133:6,7	recovery 60:13	60:12 63:15 64:11	5:1	32:16 41:21 46:15
readily 109:12	redacted 83:7,12	68:13	reporter 7:20 8:10	52:12 60:7 72:25
reading 69:17	83:25 84:6	reject 82:7,10	101:1 153:1,3	92:4 97:18 98:25
ready 109:12	reduce 130:21	129:24 147:16	reporting 18:19	98:25 109:16
144:23	131:14	relate 91:19	represent 5:20	110:14,17,19
real 138:18	reference 11:12	related 80:9,14,16	26:20	116:22 118:9
really 100:19				
	-	=	-	-

30(b)(6) Jennifer Dvorak

119:8 126:2	72:24 81:12 83:9	43:3,8,12 117:11	147:15	screenshot 66:1
141:17,25 143:2	83:9,19 84:12,17	132:12,20	River 2:11	scroll 56:9 100:8
144:9 148:11	84:21,22,24 85:3	right 58:21 79:21	roadmap 50:25	se 26:15
respond 7:16	85:7,10,14 86:3,8	81:2 84:16 106:14	role 95:3,20 120:17	search 41:4
146:15,17	86:15 87:4,22	121:5 143:15	room 87:20 103:1	second 54:5 56:5
responding 38:13	88:5,12 89:4	right-hand 18:2,2	110:23	94:17 97:4,5,25
118:23	90:12,15 91:12	27:2 34:8	Roscheck 36:12	section 127:4
response 8:19	92:23 94:4,9,12	rise 76:24	RPR 1:24 153:21	secure 44:8,21
11:18 29:11 57:4	94:25 95:10,13,19	risk 3:22 19:18	rules 9:12 60:12	49:12 55:9,11
86:9 94:3 101:1	96:14,19 98:19	34:13,18 35:6,8	running 105:22	118:14 119:20
107:12,14 119:21	100:21,23 101:6,8	35:16 49:21 50:17	runs 143:11	secured 21:24
136:16 145:5	101:12,21 102:17	50:24 51:7 52:18		securely 25:8,10
responses 7:15 8:2	103:8,20 105:12	53:8,21,22 54:9	S	security 13:13,14
8:6 100:13 106:18	108:4,19,23 109:2	54:16 56:4,19	S 2:1	13:18,25 14:19
responsive 137:21	109:6,17 110:5,8	57:9,17,17,18,21	SaaS 50:13 67:18	16:22 17:6,11
restate 120:9	110:17 111:15	65:18 69:4,8	SaaS-operated	18:3 25:23 26:7
136:21	112:12,14,15	74:14,15,17,20	71:8	26:10,15 31:15,17
restated 66:23	113:3,6,15 114:12	75:6,13,24 76:5	safe 144:15 146:22	32:3,6,6,10 33:3,9
result 68:6	114:14 115:4,5,22	77:9,12 81:5,7,12	San 2:6	33:20 41:11 44:1
results 84:11	116:3 117:4	81:13 82:4,6,20	Sara 1:7 2:18 5:21	44:2 49:9,11 50:8
114:24 123:6	118:19,21 119:9	88:13 89:13 93:9	13:22 121:21	50:12,13 51:21,23
review 9:22 10:1	121:8,18 122:2,8	93:24 94:3 97:23	135:25 138:22	52:22 55:3 57:7
11:17,21 12:6,21	122:16 123:21	98:4,5,7 101:20	139:3	57:13 65:20,24
13:1,4,12,14,14	125:13 126:2,7,7	101:24 103:7,14	Sara's 139:23	66:10 68:21 72:20
13:18,19,20,21,21	127:21 128:4,20	105:8,9,15 106:22	satisfy 51:20 72:4	76:15,22 80:13,14
13:25 14:10,19	131:21 132:2,10	107:10 110:17	saying 75:23 123:2	82:7 83:7 85:8
16:15 19:10,10,12	132:13,14,19	114:4 120:11	146:10	86:23 87:1 90:4
19:15,20,22,24	133:3,16 136:14	122:14,20 124:13	says 27:3 35:5 59:7	90:11,17,24 91:23
21:1,15 22:9,17	137:2,17,22	126:21 127:5,7,13	61:14 63:13 94:24	92:17 93:13,17
22:23,23,25 23:1	139:12,15,17	128:8,11 129:11	128:20	98:22 99:3,15
23:3,7,22 24:10	140:15 141:2,11	129:12,20 130:1,4	scenario 85:24	101:14 104:4
24:11,17 25:1,3	141:18 142:7,11	130:10,10,11,15	scenarios 87:22	111:4 117:13,18
25:17 32:3,6 33:9	142:16,21 144:4,7	130:16,16,19,20	115:3,3	117:20 118:21
33:18,20 34:6	144:13 145:14,17	130:21,24,25	schedule 114:25	119:7 120:11,15
38:16,20 44:1,2	146:7,14,22	131:15,17,23	schematics 99:22	121:24 123:20
44:25 45:5,9,13	147:24 149:9	132:16 133:1	science 60:14	124:17,24 126:22
45:18 46:5,16,19	151:14,21 153:13	134:16 135:19	scope 39:24 62:23	128:14,16 130:6
46:25 47:1,6,16	reviewed 9:19,20	139:17 147:4,7,9	68:1 79:3 88:7,14	132:3,6 133:20
47:16,18,19,25	14:24 15:4 53:2	149:16 150:19	108:15 118:16,25	134:7 138:13
48:7,8,9,17 49:3	109:4 126:1	151:5	119:11 120:6	139:14,15,17
49:10 50:9,12	reviewing 60:21	risks 11:18 81:13	121:21 125:22	141:5,9 142:2
53:10,24,24 56:5	84:18,20 123:18	121:24,25 128:7	127:1 130:7,9 134:11	143:21 145:25
57:5,13 59:2,4	revise 33:17	128:18 131:4,4,24	screen 6:3 15:12,13	147:3,3 148:7,25
61:14 66:7,10	revoked 96:10	136:15,23 137:12	16:14 17:21 33:24	150:2,18,18,22
67:3 70:8,17 71:6	RFP 36:15 42:24	144:16,20 147:13	53:11 70:22 93:22	security-wise
			33.11 /0.22 93.22	

30(b)(6) Jennifer Dvorak

Γ				i age i i i
148:22	15:1,3 21:24 26:4	sheet 23:12	98:4,8 104:8	SQL 101:7,14,21
see 15:13 27:2	26:6,10 27:17	shortcoming 96:14	114:10 132:4	SSL 25:12,13
29:12 34:15 53:14	28:20 29:20,22	shortened 44:2	somebody 45:23	staff 143:6
56:8,9,10,10,12	30:18 31:22 32:1	Shorthand 153:1,3	46:21	stand 66:20 109:11
57:17,18,20 58:1	32:17 33:4 36:22	show 15:8 26:16	sorry 30:13 43:24	stand 00.20 109.11 standalone 122:12
59:8 64:14 68:9	36:23 39:9 40:10	27:7 29:1 63:23	93:4 104:25	standard 59:11
70:22,23 71:3,17	40:16 41:22 49:22	showing 6:4 64:12	116:12 119:4	60:8,19 72:13,21
81:7 89:8,17	49:22 52:13,23	showing 0.4 04.12 shown 63:23	133:5 147:20	74:9 80:18
94:18 99:4 107:8	67:12 68:18 69:21	sic 59:9	sort 8:3	standards 72:15,21
127:4,5 128:2,18	70:4,9,14,16	side 29:24 83:14	sounds 79:24 96:12	standards 72:13,21 standing 34:23
145:13,16	71:19,19 73:1	92:18 139:24	144:22,25	73:21 75:18
seeing 16:8	79:19 83:5 100:23	140:14	speak 6:16 7:4,6,19	standpoint 138:13
seek 8:17	108:22 109:18	sign 27:24 28:7,17	7:24 8:8 18:25	144:15
seeking 79:9	110:19 111:9	sign-in 28:12 31:6	19:1 46:14 64:7	stands 96:17
seen 6:7 10:7 15:16	113:18 115:7	Signature 152:7	111:14 113:13	start 6:20 29:13
15:23,24 16:9,16	116:2 117:4	signed 55:22 73:8	speaking 96:3 98:3	61:8
34:1 53:18 89:10	118:13 119:10,20	significant 119:15	112:16 117:16	starting 57:16
99:13	122:2,11,17	significantly 60:24	123:2	61:13 70:25
select 86:16,23,23	123:16 124:1,25	similar 13:18 48:7	speaks 124:11	135:13
selected 43:9	126:14 149:17,21	151:5	specific 13:3 20:13	state 5:13 24:10,21
selecting 87:19	150:5 151:12,13	similarly 70:17	50:4 51:11 64:17	37:7,20 38:10
sensitive 82:21	151:15	146:17	88:11 105:21,21	45:12,18 46:5,20
83:24 84:5,8	Serve's 125:6	single 81:21	108:19 112:1	47:5,19 50:23
sentence 37:20	service 1:3 5:20,21	sit 43:13	specifically 7:1	75:16 80:15 88:4
61:19 63:12 68:10	32:4 42:3 50:13	site 25:3 26:13,24	8:23 11:13 19:5	112:11,19,22,23
68:16 69:19 70:25	67:12 74:6 82:14	sits 66:18	23:13,21 29:20	112:24 116:18,24
71:5,11 73:18,25	service's 107:1,7	sitting 103:10,22	68:17 69:8,19,20	125:17 141:4,10
75:16 82:19 83:23	service-specific	118:12	70:10,16 74:4,23	142:8,12,21 143:3
94:24 95:17 96:22	67:7	situation 44:6	81:4,16 105:9	148:23 153:3
97:24,25 98:3,17	services 4:9 18:14	48:21	112:3,15 113:7	stated 50:25 52:3
140:14	36:19 37:12 39:7	skipped 136:11	128:23 141:17	68:13 71:15 73:19
sentences 95:18	44:11 51:18 62:8	slide 3:19 89:7	145:13	93:11 137:3
96:3,22	62:20 63:3 67:5	slightly 32:14	specify 112:6	statement 11:16
separate 14:9	79:2,14 117:10	slowly 8:8	speculation 87:12	63:16,20,22,24
36:24 95:25 96:24	122:14 129:1,7	SOC 68:17,20,25	111:21 114:5	64:20 81:7,14,21
109:9,9 110:7	Services' 51:8	69:13,16,22,24,25	122:4,19 123:9	82:20 83:3 97:23
113:17,19 117:13	set 16:11 72:13	70:3,8,14,19	spell 5:13	105:9 107:10
125:13,15 132:20	85:1 97:8	71:21 72:2,4,16	spelled 129:10	117:11 128:8
139:21 140:2	setting 76:1	73:12	spells 130:3	136:14,18 137:9
141:12	settings 101:10	social 83:6	spoke 19:8 21:9	137:12
separately 56:11	share 107:25	software-as-a-ser	64:16 110:13	statements 70:7
September 20:21	shared 91:11,13	61:15	113:4	109:5
22:6 138:1 144:23	107:23 112:18	sole 96:17	spot 35:19	StateRAMP 50:23
Serve 4:6,7,8 11:25	114:24	solution 35:13	spring 36:4	51:5,8,10 52:17
12:16,25 14:19	She'll 29:8	61:15 64:23 97:25	springtime 57:1,3	states 1:1 15:21
			1	1

30(b)(6) Jennifer Dvorak

				Page 172
24:16 68:10 71:6	151:17	91:25 92:13,22	38:19 42:18 43:17	55:19,23 65:14,17
75:2 90:1,3	submitting 26:14	93:7,14,18 94:7	44:13 47:25 62:17	69:5 72:16 73:5
112:16 113:4	27:23 31:1 90:21	95:1,2 96:2,5 99:7	71:1 72:10 80:4	79:10 81:24 82:2
118:22 140:8	111:10 123:17	99:14,17,22	84:3,21 89:15,24	91:18 92:3 96:1
Statewide 17:11	subscribed 153:16	105:18,19,22	97:17 102:9 103:4	117:9 118:8 120:3
stating 34:22 98:8	sufficient 82:4	106:1,2 111:7	113:22 114:1	120:13 121:7,13
statuses 90:3	107:14	112:18 113:2	116:7 118:25	121:18,23 122:1
statutory 63:14	sufficiently 31:8	115:17,19 116:2	124:23 130:6	122:15 123:2,7
64:11 68:12	118:13 119:20	116:19,22 117:20	147:6,7	125:7 126:17,23
Stenographer 93:5	129:12 130:16	123:19 124:6,21	talks 71:16 83:23	128:22,25 129:6
101:2 104:23	suggesting 102:15	124:25 130:19	147:23	148:6 150:1,23
108:7	102:24	132:8 143:8,9,11	tampered 98:22	test 46:19 47:17
stenographically	suit 68:6	143:16 144:9	team 112:21	114:22
153:8	Suite 2:11	145:8 146:16,23	technical 108:9,12	tested 107:2 112:24
step 13:6 105:2	supervision 117:24	149:7,17,21 150:5	Technologies 9:20	testified 5:8 80:10
149:4	118:1	151:16,19,24	10:25 11:3 25:21	80:11
steps 21:14 25:3	supplier 51:15	system's 84:24	25:22 26:1 31:18	testify 6:1,10 47:9
46:18 126:21	support 136:17	systems 17:19	33:2 46:1 49:7	testifying 30:22
147:25	supporting 148:8	28:20 80:13 108:4	50:14 61:21 63:13	testimony 11:13
stick 23:3	supposed 137:25	148:23	68:11 76:9 99:9	47:13 64:4 90:8
storage 52:9	Supreme 144:12		116:5 117:16	96:17,18 103:6
stored 34:24 51:19	145:24 146:23	T	118:3 137:18,23	117:5 119:9
75:21 76:10,23	147:1,11 148:3,23	T 5:11 141:22	143:14 148:16	129:18 130:23
77:2	150:14	149:12 151:9	151:25	142:5,10,15,19,25
stores 57:20	sure 6:24 9:10 14:3	tab 15:10	Technologies'	143:4 145:14
storing 34:20 73:22	15:24 19:3 24:1	table 58:6,9	11:16 62:3 136:14	153:7
75:18	36:1 38:22 42:11	take 13:6 15:25	technologists	testing 46:16
street 2:11 53:6	42:12 55:9 79:25	23:10 24:16 42:9	127:13	107:19 119:6
strike 12:21 14:17	83:22 86:9 108:24	55:8 66:21 70:20	technology 56:2	tests 52:5
22:2 37:10 74:12	122:21 136:2	77:3 79:23 80:8	102:20 117:19	text 106:16
105:5,5 113:21	surprised 74:22	80:18 105:2 135:1	127:12	texts 100:13
143:1	surprising 75:3	145:7	tell 32:11,12 106:5	thank 5:17 16:11
String 3:16,17,18	surrounding 80:14	taken 1:16,23	145:22	42:13 80:1 81:1
3:20,21,23	switch 88:18	21:15,17 42:15	telling 48:6 141:3	101:4 107:6
strong 57:10	126:11	46:18 80:2 126:20	147:11	138:25 140:23
subject 111:17	switching 16:19	135:8 145:8 153:5	Ten 17:8 42:10	147:20 149:10
subjective 60:20	67:25	takes 27:5 71:7	tenets 105:17	151:7 152:4
submission 87:16	sworn 5:7 153:6	talk 9:25 28:5	tense 43:5	thereof 153:9,11
90:21 91:2 92:2,7	system 12:3 27:17	56:11 125:12	termination 150:11	thing 9:7 12:11
submit 27:21 83:4	28:8 29:22 31:2	147:8	terms 4:9 18:18	41:21 48:20 72:21
submitted 11:25	40:5 52:7,13,14	talked 29:21 38:24	35:14,17,22 36:6	86:22 128:6
12:8,12,14,14,16	53:3 55:6,8,9 56:2	41:12 68:11 74:2	37:11,25 38:23	130:20 135:21
30:15 36:23 85:25	57:20 59:23 63:2	75:20 98:24 105:9	39:4,14 41:12,18	things 6:22 8:3
124:2	66:2 67:17 84:23	105:10 126:13	41:24 42:3,18	10:9 31:7 41:17
submitter 87:16	87:15 90:23 91:6	143:8,9	43:15 50:4 51:6	41:23 52:3 66:20
	· · · · · · · · · · · · · · · · · · ·	L tallzing 10.9 20.10	I '	i
<u> </u>	1	talking 10:8 29:19		

30(b)(6) Jennifer Dvorak

•				1 age 173
98:9 102:8 106:2	131:13 134:5	102:17 103:8,20	transfer 44:8	41:7,10 43:19,22
110:16 114:21	135:1 141:8 145:7	105:13 106:6	transferred 100:20	44:25 45:17,25
122:21 129:9,18	150:10,12 153:6,6	103.13 100.0	transmitted 75:22	47:11 48:7 49:7
130:7 131:7,18	150.10,12 155.0,0	108.4,19 109.2,0	76:23	50:3,8,14 54:8,23
,	times 54:4 131:12	111:13,15 112:12		55:21 61:14,21
137:4,5 138:10 139:24		′	transmitting 34:20 73:23 75:19	, and the second
	title 16:20	112:14,15 113:3		62:3,18 63:2,13
think 10:8,17 14:9	titled 19:18	113:15 114:12,14	transparent 76:10	64:18 65:8 66:8
19:13,23 21:4	to-do 57:11	115:4,5,22 116:3	traverse 48:12	66:12 67:4,12,14
22:23 23:8,15	today 5:23 6:10,25	117:4 118:19	traversing 34:25	67:16,19 68:4,11
28:22 30:9,13	7:9,20 8:5 9:13	119:9 121:8,18	52:23 55:6,8	69:12 70:6 72:2
36:9 52:24 55:12	10:6,8 11:14	122:2,8,16 123:21	trial 139:5 142:17	72:24 73:1,4,18
56:21 59:14 75:5	18:25 19:2 42:2	125:13 126:2,7	true 63:18 64:2,20	73:19 74:5,11,13
75:9,11 76:8	43:13 46:13 80:10	127:21 128:4,17	64:21 68:14 72:25	75:17 76:9 78:1,3
79:21 81:18 85:23	117:5 118:12	128:21 131:21	131:20,22 153:9	78:6,7,10 79:7,18
85:23 86:6,21	135:20 136:19	132:2,10,13,14,19	truly 70:12	80:15 85:18 87:22
88:21 98:10,16,24	137:20 141:3	133:17 137:2	trust 6:22	92:18 94:21 95:9
101:10 102:13	146:21	139:15,18,22	try 8:5 19:3 23:3	96:4,22 97:12
103:11 106:12,15	today's 9:18 11:1	140:2 144:17	28:4 35:5 49:3	99:9,16 100:15,16
111:8,21 119:11	19:5 80:21	147:24 151:21	58:13 120:22	101:5 103:16
122:5 124:11,19	told 20:20 22:5	Tool's 71:6	trying 31:5 65:9	106:8 107:12,24
128:2 129:14	69:15,21,23 102:2	tools 31:17 45:13	74:19 101:19	108:3,20,22 109:5
135:4 136:5,20	102:5 111:2,2	45:18 46:5,19	102:4,6 103:2	111:19,21 112:4,6
139:3,23 140:8,8	114:23 123:14	47:18 87:23 88:5	119:25	115:5 116:5,21
141:4,24 145:1	145:3	88:12 113:6	turn 19:16 47:24	117:3,15,24 118:2
146:15,17	tool 11:21 13:19,21	top 15:21 51:11	89:6,16,21 109:10	118:6,9,10,22
thinking 134:5	14:1,4 20:13	52:9 57:18 77:4	turning 57:23	121:3 123:15
third 43:14 44:5	22:18,23 23:1,4,7	127:4	two 10:9 17:14,14	125:17 128:4,20
68:23 144:24	23:22 24:7,10,11	topic 13:5 55:18	18:8 95:18 96:3	131:20 132:10,11
third-party 34:21	24:17 25:1,17	137:8	96:22 119:11	132:13 135:16
38:3 44:3 51:2,14	33:18 34:6 38:20	topics 6:1,17,21 7:1	127:20 129:23	136:8,14 137:16
61:16 63:10 68:21	44:25 45:1,5,9	8:24 9:16 11:8	149:14 151:19	137:17,21,23
77:14 114:22	46:17,25 47:6,19	118:25 119:12	Tyler 3:19,25 4:5	138:6 139:15
132:12,20	48:17 53:24 56:5	135:12 138:21,21	9:20 10:6,24 11:3	143:9,11,14,19,20
thought 65:6	59:4 61:14 67:3	tortuous 68:5	11:16,21 13:15,19	144:2,11,19 145:2
three 22:4 57:18	69:20 70:8,17	touched 98:16	14:5,7,11 15:1,3	145:16,23 146:5
116:6	72:24 83:9,19	trackability 28:12	15:21 19:24 22:1	146:13 147:23,25
three-page 53:16	84:12,17 85:3,7	traffic 101:16	22:3,9,17 23:6,17	148:16,24 149:16
tied 60:24 91:24	85:10,14,20 86:3	112:5	24:10,17,25 25:17	149:20 150:4,13
110:7	86:4,5,8,15 87:4,8	trail 30:14,17 53:1	25:19,20,22,25	150:15,22 151:4
time 10:15,15 17:9	89:4 90:12,15	trails 91:14	31:18,25 32:16	151:25
19:8,21,25 33:19	91:12 92:25 94:4	training 65:24 66:3	33:2,7,10,12	Tyler's 14:19 25:18
48:20 52:15 54:3	94:9,25 95:10,13	transcribed 153:9	36:22 37:10,12,12	26:10 40:8 52:12
54:5,7 56:5 57:13	95:19 96:14,19	transcript 7:23 8:4	37:13 38:1,25	67:9 70:7 71:7
80:25 103:16	98:19 100:23	107:13 153:9,13	39:13,19,21 40:14	144:23 145:9,9
120:12 126:22	101:6,8,12,21	153:14	40:15,17,18,25	Tyler-hosted 41:4
	l		l ————————————————————————————————————	l ————————————————————————————————————

30(b)(6) Jennifer Dvorak

				1 age 174
44:17	99:5 100:19 102:5	150:8	43:14 49:4 51:15	visited 25:5
type 12:9 14:10	102:5,6,19 103:3	unencrypted	51:24 52:9 59:25	visiting 44:14
43:19 68:17,20	102.5,0,17 103.5	101:16	61:15,19,20,21	vulnerabilities
72:5,21 77:21	109:22,24 110:10	unintended 124:20	65:18 74:8 77:4	51:14 137:1
78:11 79:1 87:6,7	113:1,24 119:17	unique 53:23	78:4,22 85:11	vulnerability 52:5
87:7,7 90:2,11,16	122:6,10 123:1	116:24	117:13 122:25	114:18
90:24 91:15 99:8	124:10 126:15	UNITED 1:1	128:16 132:12,20	114.10
99:10	124.10 120.13	unknown 20:18	141:11	$\overline{\mathbf{w}}$
types 12:5,20 13:3	130:15 132:9	52:15 145:5	vendor's 72:16	W 2:11
13:3 30:14 48:12	133:11 138:19	unknowns 55:12	78:24	w/3:19
54:17 55:6,7	understanding 6:9	87:20 136:22	vendors 32:9 34:19	WA 1:24
60:23 82:21 83:10	11:21,23,24 12:4	137:13	35:11 43:19 62:7	wait 7:15 148:15
83:15,24 84:8	12:7,19,23 13:2	unpurchased 48:17	67:25 74:2 75:1	walk 25:2 57:15
85:7,8,19,24	22:1 25:16 32:5	untrue 68:15	117:12,25 118:1	58:3 61:8 81:21
	38:23 44:24 49:1		120:15 147:4	want 6:21,23 7:23
86:23,23,24,25 87:2,2,18,18,18	49:12 53:9 55:1	unusual 126:5,10 uploading 53:2	verbal 8:2	11:20 13:5 15:19
90:4 99:12 101:11	58:19 59:23 60:11	uploading 55:2 use 22:15 24:10	verbally 20:15	16:4 30:21 35:4
			verified 93:15	47:8,10 53:8
124:4,5,14,14,14 124:15,18	64:19,20 66:17 79:6 80:20 83:4	25:13,22,25 31:18 31:22 40:7 43:5	111:6	55:16 56:22 61:8
typically 63:21	85:6,19 86:2,14		verify 91:15	61:18 64:14 73:24
0 1	·	46:19 47:17,19	verny 91:13 versa 23:1	83:15 84:19,19
66:1 69:3 78:3	87:14 91:13 93:17	51:5 62:1,7,8,10		89:24 98:16
101:15	93:19 96:21 97:10	62:11 63:3,10	versus 5:21 9:5	113:23 119:17
typo 56:16	97:13 100:11	86:1 112:10,12	28:6,21 57:25	126:11,16 130:14
U	101:13 109:7 112:17 114:12	120:18 124:6	59:12 110:3,24	135:13
ultimately 80:8	117:1 119:10,21	142:6 145:9,20 user 29:23 98:25	122:11 133:17 vet 49:10 55:14	wanted 20:22 35:1
145:9	124:16 132:3,7,22	103:22 111:18	95:11 132:2	37:20 38:6 68:8
unable 9:1	139:21 140:1,5,21	112:1,6	vice 23:1	100:8 107:15,17
undergoing 50:12	142:6,9 143:5	users 95:2,20 96:25	Victor 5:16	Washington
underlying 51:16	142.0,9 143.3	112:13 115:13	Victor 5.16 Videoconference	112:22,23
61:17 73:20	151:24	uses 44:25 45:3	1:17	wasn't 44:1 55:13
undersigned 153:3	understood 8:18	101:7 113:8,20	videoing 8:4	55:14,17 59:15,21
understand 8:12	10:19 20:1 28:3	115:4	view 28:23 45:17	60:5 102:24
8:14,14 19:6	39:8 40:21 43:13	usually 14:13	95:3,12 117:1	106:24
21:21,23 22:24	48:13 60:25 77:5	Utah 112:25	· ·	way 8:7,17 23:25
28:5 29:10 31:3,5	81:25 83:20	Utah's 112:25	127:16,18,20	63:19 64:7 68:14
31:18 35:5 46:3		utilized 50:20 54:2	129:10 130:17 138:20 139:9	78:7 87:9 90:10
48:19 49:11 58:14	101:18,18 102:3 102:23 103:17	74:9	158:20 139:9	91:15 102:14,20
61:9,18 62:21	102:23 103:17 105:24 109:13		viewable 28:24	102:25 104:10
65:10 73:24 80:21	110:12 124:22	utilizing 99:9	viewable 28:24 viewed 12:1 44:19	127:12 129:23
82:1,9 83:1,22	127:15 130:8,22	V	84:17	130:11 143:1,24
84:10,20 85:10,11	,	v 1:6 5:16	viewing 114:3	145:6 148:22
85:16 86:9,11	137:7 138:3,17 underway 32:25	valid 25:12	151:22	153:11
87:17 90:7,13,17	37:14 39:3 121:5	valid 25:12 validated 99:11	vis-à-vis 70:8 76:16	ways 85:9
91:18 92:14,17	122:22 125:20	vandated 55.11 vendor 11:7 35:15	visit 44:16,17	we'll 6:25 9:25 38:8
93:14 96:8 98:4	144.44 143.40	35:17 43:7,9,11	VISIL 44.10,1/	56:11 80:6,17
	<u> </u>		<u> </u>	

30(b)(6) Jennifer Dvorak

				1 age 173
106:14	Wilson 18:9,25	68:2 76:4,19	11 3:22 15:20 19:15	2:14 80:3
we're 6:24 8:4,21	19:9	82:25 86:21 87:13	21:16 48:2 53:12	2013 15:16
32:23 33:6,7 50:8	Wintertime 57:1	88:1,8,16 90:5	61:11 63:13 73:17	2021 16:24 17:1,4
51:4 52:18 62:17	wish 131:10	92:10 97:2 99:3	81:4 97:23 100:8	50:1 135:22 136:1
62:17 66:4 71:21	witness 5:6 6:1 7:3	104:16 105:14	105:8 106:23	136:9
84:3 85:12 89:15	9:5,6 46:13,13	104:10 103:14	127:3 141:25	2022 1:23 5:2 10:18
89:24 100:6 102:9	138:19 153:6,7,16	108:2,17 111:23	147:8,19,19	11:5 13:8 19:19
103:4 105:7	word 145:20	114:8,17 116:15	11:50 71:2	153:17
113:22 114:1	words 24:5 102:19	121:12 122:5,20	12 3:23 20:3 21:17	208 2:13
117:24,25 118:25	work 42:10 66:14	121:12 122:3,20	93:20	208 2.13 22 10:21
121:1 124:23	78:2,8 109:11	125.11 125.4	12:04 5:2	28 15:16
135:4,20 136:23	112:4 145:21	133:23 134:9,21	12:54 42:16	20 13.10
we've 5:23 7:2 10:4	worked 35:13	135:6 136:4 138:9	13 3:24	3
			14 3:25 15:9 16:11	3 2:5 3:14 34:8
22:7 32:22 42:8 46:15 47:25 50:22	120:13 141:4	138:23,24 139:1 139:13 140:11	14 3:25 15:9 16:11 141 3:6	53:15 56:10,16
	workflow 99:21	vear 36:4,6 56:24	141 3:6 14441 1:24 153:21	3:43 135:9
79:21 80:5 97:16	working 13:17	,	14441 1:24 153:21 149 3:7	3:50 135:9
97:24 98:10,16 99:2 101:10	16:25 17:3,5,7	57:1 65:25 71:24 120:10 144:24	149 3: / 15 4:5 6:15 16:14	30(b)(6) 1:11 3:1
	50:8 66:5 81:4			4:1 6:1 9:5 39:25
106:23 109:4,15	works 23:24 58:4,6	years 17:8,14 60:15 Yup 140:13,22	135:14 151 3:8	40:3 46:13 55:18
110:16 113:25	65:10,14 99:17			62:23 68:2 153:5
116:25 125:6	112:7 128:14	141:7 147:21	16 4:6 6:15 26:17	300 2:11
126:13 134:25	143:25	$\overline{\mathbf{z}}$	137:16 138:21	31st 20:22
135:14,19 136:5	would've 19:13	zero 130:20	139:8	3384 1:24
136:19,20 137:19	20:8 36:3 44:19	Zoom 2:4,10,17	16th 71:2 94:20	342-3310 2:13
143:8,9 151:6	71:23 75:9,11	80:22	17 4:7 6:15 27:7	342-3310 2.13
web 12:1 25:13	99:4,13 102:17	00.22	138:21 139:8	4
44:10 51:8 62:8	107:15,17 118:20	0	18 4:8 6:15 19:19	43:15 56:12,13
133:10,14,24	wouldn't 45:14		29:2 138:21 139:9	4:13 152:6
134:11,12,23	46:2,2,9 47:4	1	19 4:9 5:4 35:20	415 2:6
web-based 62:19	49:14 73:10,11	1 3:12 5:4,24 11:12	38:24 41:19,25	413 2.0
133:24 134:10	74:22 122:14	11:19 15:20 56:8	42:19 43:14 50:5	5
website 24:24 25:5	133:15	56:15 57:17 128:4	55:20 79:11,17	5 3:5,12,13,14,15
25:8,9,14 26:25	write 114:20	128:6 130:3,11,16	117:9 118:8 123:7	3:16,16,17,18,19
28:13,15,23 31:16	written 8:4 137:10	132:9 135:11	125:8 126:17	3:20,21,22,23,24
40:19,22,23 44:14	wrong 49:2 89:20	136:16 147:18	2	3:25,4:5,6,7,8,9
44:17,18	X	1:04 42:16		56:8,12,13,15,16
websites 24:17,18	X 5:11 141:22	1:21-CV-00305	2 3:13 15:20 17:21	56:16
25:13,18,18,18		1:6	56:10,15 68:17,17	5/18/22 3:16
30:5	149:12 151:9	1:58 80:3	68:20,20,25 69:13	5/27/21 4:5
week 20:16 145:5	Y	10 3:21 33:23 35:19	69:16,22,24,25	5035 89:7
went 24:18 25:8	yeah 10:17 19:3	37:17 70:21 94:14	70:3,8,14,19	5037 89:17
whatnot 142:2	20:8 22:14,16,20	106:13,14 116:17	71:21 72:2,4,16	5042 89:21
whereof 153:16	29:9 30:13 31:13	10-minute 79:23	73:12 127:4	5042 69:21 5044 90:5
whoa 43:24	36:7 43:9 46:9	100 108:24	131:24 132:11	50955 1:24
willingly 144:3	51:17 63:7 64:6	1087 2:11	147:18,21,22	5117 34:9
	31.17 03.7 0 4 .0	100/ 2.11	148:15	
	•	•	•	•

30(b)(6) Jennifer Dvorak

				Page 176
5303 109:1	<u> </u>			1
5304 107:5				
5531 53:15				
3331 33.13				
6				
6 3:17				
6/30/22 3:17				
675-3400 2:6				
7 1.22 2.19 5.2				
7 1:23 3:18 5:2				
117:11				
7/14/22 3:19				
7/15/22 3:15 7/6/22 3:18				
7387 2:12				
7387 2:12 7th 2:5				
/th 2:5				
8				
8 3:19 88:22,24				
97:18 140:10				
8/18/22 3:22				
8/19/22 3:21				
8/24/22 3:23				
8/28/13 3:25				
8/8/22 3:20				
83707 2:12				
9				
9 3:20 6:15 11:15				
106:15,21 136:11				
136:13,18				
94111 2:6				
9th 153:17				
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Exhibit K

CNS Daily Reports Style Manual

I. Introduction and Style Manual

- A. Overview
- **B.** Coverage
- C. Docketing
- D. Structure of Report Entries
- E. Summaries
- F. Specific Style Guidelines
- G. Order of Report Entries
- H. Messages

II. Common Errors

- III. Specific Terms & Dinger Keywords
- IV. Coverage Do's & Don'ts
- V. Uploading
- VI. Uploading Do's & Don'ts
- VII. Pitching the News

CNS DAILY REPORTS

I. INTRODUCTION AND STYLE MANUAL

A. OVERVIEW

CNS provides subscription-based legal news services in an increasingly competitive field. The key points we compete on are **speed**, **thoroughness**, **accuracy** and **full-text availability**. Speed, thoroughness and accuracy will be described in greater detail below. The process for making full text available is outlined in "Uploading Do's & Don'ts" (Section VI).

Our competitive edge is based on live coverage. That edge consists of the summaries written by reporters and the speed at which they get their reports out to subscribers. The reports keep subscribing law firms informed about the latest litigation, particularly cases affecting their clients, and allows the firms to quickly determine the nature of the complaints filed each day. For courts visited every day, reporters should strive, through their own discipline and in their dealings with the court, to publish a report in the evening that covers new cases filed earlier that day. For courts not visited every day, reporters should strive to cover all new cases filed since their last visit.

The reports need to be thorough and accurate. Reporters must include all parties in the cases they cover (with the exception of asbestos cases; see below). And reporters should include a full-text copy of all major cases as part of their coverage.

In general, use the rule, "When in doubt, report it" and "When in doubt, upload it."

One of the worst errors a CNS reporter can make is to not report a case that should have been reported.

The only way to avoid missing cases is to thoroughly track case numbers and make sure you've seen each and every civil complaint filed. Cases cannot fall through the cracks – reporters must make sure they are seeing and accounting for all new civil cases filed in the courthouses they cover, as a condition of their employment.

The aim of the CNS Daily Report is to capture information of interest to our subscribers in a way that is complete, brief and interesting by entering the information into the CNS Complaints Program. This manual provides a comprehensive reference on the basics of compiling a solid CNS report, including coverage, style, structure and common errors. It also includes a rough guide to the cases that deserve a full-text copy.

B. COVERAGE

In general, we report on any case where a business, public entity or another nonindividual is included among the defendants. These include:

- Businesses
- Federal and state agencies, cities, municipalities, school districts
- Individuals doing business as (dba) a corporation

- Trusts, Estates, Trustees and Estate Holders or Representatives, also called Estatees
- Doctors, lawyers, dentists, accountants or other professionals being sued for actions stemming from their work. These can often be identified by titles after the name, such as MD and DDS.

Famous individuals. Reporters should report cases against famous individuals, even though we generally do not report cases where all the defendants are individuals. Reporters should report a case if the individual defendant is famous (e.g., Bill Clinton, Martha Stewart), notorious, recently in the news or the case is simply unusual and interesting. However, do not automatically assume that someone with the same name as a famous person is, in fact, that famous person (think Michael Bolton from "Office Space"). Do not write that Mr. Doe is a congressman or a professional basketball player unless the complaint explicitly says so, or you know for sure.

Interesting cases against individuals. Reporters should skim through cases against individuals, if it won't cost extra money, in order to determine if a case is interesting. If a case against an individual is at all interesting or newsworthy, report it

<u>Federal Court</u>

We summarize all cases against non-individuals, including "mc" or "ms" cases and white-collar or otherwise interesting/newsworthy criminal cases for which a press release is issued, with the following **exceptions**:

- Mortgages/foreclosures in which a bank is foreclosing upon an individual's home, though we do report when a business property is being foreclosed
- HHS (Human and Health Services) decisions and appeals of Medicare decisions
- Prisoner petitions filed pro se (Don't look through every prisoner petition to see
 if the prisoner has an attorney but if you notice a prisoner is represented,
 report it)
- Social Security appeals
- Student loan collections
- Writ of habeas corpus
- Cases with "mc" or "ms" as the letter combination that are filed pro se by vexatious litigants with a pre-filing order against them.

State Court

We summarize all cases against non-individuals, with the following exceptions:

- Change of name
- Civil protection/stalking orders
- Criminal.
- Driver's license suspension
- Family/domestic (including child support, custody, divorce and annulment)
- Habeas corpus/prisoner petitions filed pro se (Don't look through every prisoner petition to see if the prisoner has an attorney but if you notice a prisoner is represented, report it)
- Municipal court matters (including small claims cases and, in California, limited jurisdiction complaints)
- Mortgages/foreclosures in which a bank is foreclosing upon an individual's home (We do report cases in which a bank is foreclosing on a business property)
- Social Security
- Student loans
- Summons
- Tax cases (Though your spider might return them, the entries should be

deleted from your report before publishing. If your court does not have a spider and tax cases are filed there, talk to your editor about how to report them).

Sealed cases. We do not report sealed information. If a sealed case has inadvertently been made available to reporters, the reporter should NOT report on the case and should bring the mistake to the attention of court personnel. If a court publishes limited information about a sealed case, such as its general nature and case number, we do report that information. If the parties are not sealed, we can publish that information. If the parties are sealed, they should be reported as "Under seal." The summary should include the phrase "Case filed under seal."

C. DOCKETING

Daily Courts: Report to the database <u>only</u> cases that you know we want to report but for which full text is not available on the first day docket information is available. Then look for the case each day until at least 90 percent of your cases would normally be reported, at which point you should include the docket in the published report and stop looking for the case.

Two exceptions: Continue to look for and eventually report cases that are (1) obviously newsworthy or important or (2) were requested by a client. Intersperse the docketed cases you include in your report among other cases for which you don't make full text available. Arrange them all by seeming importance.

Courts we don't visit every day: Include the docketed cases in your published report, then look for the case for two subsequent trips and report from full text when you get the case.

If a court has particularly bad access and following this policy would mean we don't write full-text summaries on a high percentage of cases, let your editor know and we'll work out a specialized plan for that court.

If a case number is unused look for three months from when it should have been used. After that, circle it as unused and stop looking for it. Generally speaking you should look every day for one week, then once a week for two weeks after that, then once a month until 3 months after the case should have been used.

If you report with temporary numbers it is your responsibility to update the numbers every day. If a temporary number still has not been assigned a permanent number three months after it is filed, ask Lisa Williams (lwilliams@courthousenews.com) to delete the number from the database. If you are reporting from a Pacer court, confirm that the temporary number is no longer on Pacer before asking for it to be deleted. If the temporary number is still there, we cannot delete the case.

D. STRUCTURE OF REPORT ENTRIES

The report entry for each case you write about will be comprised of three sections: the data fields, the case identifier and the summary. This chapter explains how to write and format each section.

Data Fields

The data fields are where you enter basic information about the case, including the names of plaintiffs, defendants, judges and lawyers and case numbers.

Parties

List all parties, separated by semicolons. Do not use a comma after the business name, except to introduce a modifying phrase, such as "a Florida company." Do not capitalize the word "corporation," "company," "limited partnership," etc., except where it is part of a proper name.

Example: "John and Jane Limited Partnership, a Florida limited partnership."

List all defendants, including dbas, fkas or akas. If there are John or Jane Doe defendants, write "Does." Do not include the numbers after "Does." Never use "et al" (meaning "and others") for parties. Always write them all out.

Exception: When reporting asbestos cases, write out the first five defendants followed by ", (asbestos defendants), et al." rather than listing each defendant.

Individual defendants. You can leave off "individually" or "an individual" unless it is something like "individually and dba XYZ business" or if it adds information, like "individually and as director of human resources."

If the complaint lists something like "Jim and Jane Smith, individually and as trustees of the Jim and Jane Smith Trust," we should write it like the following: "Jim Smith; Jane Smith, individually and as trustees of the Jim and Jane Smith Trust."

Class or representative actions. Write out the entire phrase, where applicable.

Examples:

"Jim Smith, on behalf of himself and all others similarly situated" or

"Jim Smith, as guardian ad litem to J.D., a minor" or

"Jim Smith, as trustee of the Jim and Jane Smith Trust"

Out-of-state corporate parties. If a corporation is out of state, we list the state where it was incorporated.

Example (if your report is from outside California): "Courthouse News Service, a California corporation."

In-state corporate parties. If a corporation is in state, this information is not necessary. The same goes for partnerships, joint ventures, etc.

Abbreviation. When listing the parties, you may abbreviate "Corporation" to "Corp." and "Company" to "Co.;" "doing business as" to "dba;" "formerly known" as to "fka" and "also known as" to "aka." Leave the periods or slashes out of "aka," "fka" and "dba." Do not abbreviate the terms if you use them in summaries.

Acronyms. Acronyms following party names should be capitalized with no periods.

Example: "Wells Fargo Bank NA; Does"

Commas. Eliminate commas wherever possible. Commas within the proper party name can be used, but a comma is not necessary before "Inc.," "Corp.," "Co.," "LLC," etc. Example: "ABC Inc." Not "ABC, Inc."

Middle names and initials. Include middle names and initials for parties, according to how they appear on the complaint, but not for attorneys.

[&]quot;Jim Smith, by next friend Jane Smith"

Other Fields

Case number. In state court, write the entire case number, including any prefixes, as a general rule. In federal court, leave out dashes and preceding zeroes.

Example for federal court cases: write 3:15cv425. Not 3:15-cv-00425.

Judge. Write only the judge's last name, where available, and omit suffixes. If no judge is listed, leave the field blank.

City. Fill in this field only when we report on cases filed and housed in multiple courthouse locations within a given county or court section.

Local lawyer. Write the first and last name of the lead lawyer. The lead lawyer is the one who signed the complaint. For transfers and removals, list both the lead plaintiff attorney and lead defense attorney, when available. If the lead plaintiff attorney is not available, put "NA" or "Not Listed." For self-representing plaintiffs, write "Pro se" or "In pro per," according to the phrase used by your court.

If a lawyer is representing him or herself write the lawyer's name followed by "(Attorney Representing Self)," all in the local lawyer field.

Example: "John Smith (Attorney Representing Self)"

Be careful when you put "Pro se" as the plaintiff attorney for removals. In e-filing courts defendant attorneys who file removals often put "Pro se" in the plaintiff field even though the case was not filed Pro se. If you can look at the exhibits without paying, look to see if the original complaint is attached. The civil cover sheet lists attorneys as well. You can also search our database. If you don't know, put "NA" or "Not listed." Don't put "Pro se."

Local firm. Write the first two names of a law firm's name, without commas or other punctuation. Leave out "LLP," "PC," "PLLC" or any other such designations.

<u>Example:</u> "Larry Moe" for the firm "Larry, Moe & Curly" or "Bert Ernie" for "Bert & Ernie LLP."

If the lawyer is a sole practitioner, leave this blank. We don't list the firm's name if it's "John McCarthy" of the "Law Office of John McCarthy" or "John McCarthy" of "John McCarthy & Associates" because it is redundant.

<u>Accuracy</u>

Accuracy in our reports is of the utmost importance. If you misspell a party's name, the error will be transferred into our searchable database. Subscribers can specify certain "dingers," or keywords that they want flagged, such as "employment" or "Procter & Gamble." If you incorrectly write "Proctor & Gamble," the subscribers will not receive the proper dinger. (See the Specific Terms & Dinger Keywords list.)

Case Identifier

The identifier establishes the main cause(s) of action/case category(s). We introduce this with a brief descriptive phrase about the nature of the complaint, such as "Securities" or "Product liability." Always start with the main cause of action. Be as specific as possible and use dinger keywords where appropriate.

Examples:

"Contract."

[&]quot;Employment and race discrimination."

Damages. Do not list "damages" as a cause of action. It is not a cause of action and most complaints ask for damages. Indicating as much does not add to the understanding of the case and should therefore be avoided. You should, however, report the amount of damages sought unless it is a standard jurisdictional minimum. Generally speaking monetary amounts should appear as a stand-alone sentence, with the exception of a request for punitive damages, which should be noted because it ups the ante.

Example: "Plaintiff seeks \$4 million in punitive damages."

Multiple causes of action. If there is more than one cause of action you want to include – a contract case involving unfair competition allegations, for example – list a maximum of four causes of action, choosing the most important ones as best you can. Those that involve intent, such as fraud, are more important than those where no intent is alleged, such as an action for accounting.

Examples:

"Contract and unfair competition."

Class actions. The phrase "class action" should appear in the cause of action statement for all class actions.

Example: "Class action for false advertising."

If the cause of action is otherwise only one word, that word can appear before "class action." Otherwise "class action" should appear first with "for" after it.

Example: "Contract class action."

Example: "Employment class action."

Example: "Class action for bad faith."

Exception: In California there is a cause of action called PAGA (Private Attorneys General Act). These cases can be class actions too but are not always class actions. Look for the word "class action" or for "class action allegations" somewhere in the suit to help determine whether to call it a class action.

Declaratory or injunctive relief complaints. Only use "Declaratory relief," "Declaratory judgment," "Indemnity" or "Injunctive relief" as causes of action if there are no other causes alleged and you can't tell what law or contract the plaintiff is suing about. The former are desired remedies, not causes, and should only be used as causes of action when you have no other option.

Specific laws. For common laws, translate into keywords wherever possible. For example, use "Antitrust" instead of "Sherman Act" or "Trademark" instead of "Lanham Act." Only a few federal laws can be shortened to their acronym (see Specific Terms & Dinger Keywords), but state laws and more obscure ones should always be written out.

Example: "Truth in Lending Act." Not "TILA."

E. SUMMARIES

After the identifier comes the actual summary. These should be thorough, accurate and concise – not an easy combination.

[&]quot;Employment, gender discrimination, retaliation and sexual harassment."

Party References

General party references. You will usually refer to parties in a summary as "plaintiff(s)" and "defendant(s)."

Example: "Defendant hit plaintiff in the head with a bottle."

Specific party references. In cases with multiple plaintiffs and defendants, you might need to specify by saying "plaintiff Sherlock" or "defendant Watson." When you cite a specific corporate party, use the whole name or an abbreviated version that amply captures the name.

Example: For "Wells Fargo Bank," say "defendant Wells Fargo" rather than "defendant Wells."

Individual references. When referring to specific individuals, use their last name unless more than one party has the same last name and put "plaintiff" or "defendant" before the last name on the first mention. If there is more than one party with the same last name, write "plaintiff" or "defendant" followed by the full name.

If one party is listed in the plaintiff field, use the word "plaintiff" in the summary. If more than one is listed, use "plaintiffs" in the summary. Use the same logic for defendants. Do not count "Does" as a party for this purpose.

IMPORTANT: It is crucial that you never interchange the terms "plaintiff" and "defendant." This exposes us to libel lawsuits. Always carefully proofread each report to make sure you do not mistakenly accuse a plaintiff of the defendant's alleged misconduct! This warning is particularly relevant to inexperienced reporters.

Removals and Transfers. Put the court from which the case was removed and the cause of action, which you can glean from the nature of suit code in federal court. The cause of action might be listed on the docket for state court transfers.

<u>Example:</u> "Removal from San Francisco County Superior Court. Contract." <u>Example:</u> "Transfer from the Northern District of California. Contract."

Do not upload PDFs for transfers or removals when compiling your reports. If someone requests a transfer tell them to download it from the original court. If someone requests a removal make the notice of removal available for download followed by the original complaint.

Writing Style

Be brief. Make sure to include all relevant details, but aim to keep it short. Never use a long phrase when a short one will do. Most summaries will be one or two sentences, but those for more complex cases can be longer. These include class actions and major business disputes, as well as antitrust, environmental and sexual harassment cases. But keep in mind that even the meatier cases can be boiled down to three or four well-worded sentences. Generally speaking the longest summary you write should fit in the summary box in record view in the complaints program, when viewed in fullscreen mode, without having to scroll.

Be specific. If a plaintiff was injured by medication, specify the medication. If a famous rapper or rock band was sued, name the band or artist. If someone was harassed, give a few examples of what happened. If stock prices dropped due to manipulation, say how much they dropped. If someone was "the subject of police brutality," tell what happened - if he was hogtied, say he was hogtied; if beaten, say

he was beaten; if shot, say he was shot. Avoid legalistic generalization.

Be definitive. Do not write "allegedly" or "claims." Report all cases as though the facts in the complaint were true. We include a disclaimer at the top of every report stating that all allegations are just that, allegations, and should not be understood as fact.

Keep it simple. Use the simple version of equivalent words.

Examples: "says" rather than "states;" "white" instead of "Caucasian;" "black" rather than "African-American."

Avoid using "etc." If there is something to add, we should say it. If not, it's pointless to make a general allusion to undefined allegations.

Avoid legalese. Lawyers are not inherently good writers, so please avoid parroting their jargon. We can't stress this point enough. Pretend you are in the kitchen telling your mother what happened in the case. For example, you would not tell her that, "Defendant's failure to build, equip and maintain a construction area caused plaintiff to make unexpected contact with a depression in the ground, causing him to suffer severe personal injuries." Instead you would say, "Plaintiff rode his bike into a hole at a construction site." Make it your mantra to use plain English.

Use active voice whenever possible. In active voice, the actor performs the action on the recipient. In passive voice, the recipient has the action performed on it by the actor. Passive voice can bog down, lengthen and unnecessarily complicate your summaries. It also dilutes the power of your verbs. Note the difference between:

<u>Active:</u> "Defendant forced plaintiff to dance naked."
<u>Passive:</u> "Plaintiff was forced to dance naked by defendant."

Lift good quotes. Quote from the complaint when it adds detail, such as dialogue or important descriptions. Otherwise, paraphrase and condense allegations. See additional quoting tips in the next point.

Make it interesting. Colorful, telling details liven up the report. Most of our subscribers are lawyers or legal librarians who read hundreds of boring case descriptions each day. Anything you can do to make things more interesting will help. If a guy got hurt on the boat, your readers want to know what happened – did he break an arm, fall in the hold, what? Some lawsuits are bland as can be and there is nothing you can do to make them exciting. But if there is any funky detail that helps bring a case to life, put it in.

This is especially true of sexual harassment cases. Don't hold back – tell us a few of the dirty things the harasser said. For example, if a male supervisor allegedly told his female assistant, "I want to snort cocaine off your bare ass" (an actual quote from a complaint!), include it in the summary.

Keeping summaries both brief and interesting is often difficult. Use extra words to add real detail and color to the summaries, and save words by tightening up other, less descriptive phrases.

Find the Beef. An old Wendy's commercial featured a woman saying, "Where's the beef?" That could also describe the reporter's mission in summarizing a complaint.

Get to the beef, the heart of the complaint, and tell that story in simple terms, as you would when telling a story to a family member in the kitchen.

F. SPECIFIC STYLE GUIDELINES

We use AP style unless otherwise indicated. CNS will reimburse you for a copy of the AP Stylebook. We also recommend these books:

- "The Elements of Style," by William Strunk and E.B. White
- "When Words Collide: A Media Writer's Guide to Grammar and Style,"
 by Lauren Kessler and Duncan McDonald
- . "The Word," by Rene Cappon, a former AP editor

Capitalization.

 Capitalize proper names only when you write out the full title on first reference. Shortened versions in subsequent references are generally lower case.

Example: "The City of Chicago Parking Authority" or "Chicago's parking authority"

 Capitalize words like "city," "court," "act" and "district" only in the context of the proper name.

<u>Example:</u> "The city voted to ban scissors." "The school district does not allow hooligans." "The court erred in its decision."

Format the cause of action as you would a normal sentence.

Example: "Civil rights." Not "Civil Rights."

Copyrighted materials. Place copyrighted materials in quotes. Trademarks and patents should be capitalized but not placed in quotes. Use the AP Stylebook as a reference.

Dollar amounts. Always round down: For hundreds, to the 100 (\$624 is \$600); for thousands and tens of thousands, to the 1,000 (\$4,915 is \$4,000, \$14,786 is \$14,000); for millions, to the hundred thousand and write out (\$1.5 million). Generally speaking monetary amounts should appear at the end of the summary as a sort of stand-alone sentence, unless the amount is for punitive damages. (See Damages section.)

Hyphens. Words should be hyphenated when the hyphen makes them a compound modifier that functions as a single part of speech. "He has a billion-dollar financial empire" is hyphenated because "billion-dollar" functions as an adjective, but there is no hyphen in the phrase "he has a billion dollars." Do not hyphenate adverbs ending in "-ly."

Example: "newly purchased home." Not "newly-purchased home."

Lawyer inaccuracy. When lawyers make mistakes in their pleadings, do not repeat the errors unless you put them in quotes with a (sic). If they misspell a party name, write the correctly spelled party name in the appropriate party field without a (sic).

Modifiers. Modifiers should almost always be placed next to the words they modify. Even if it seems clumsy, you should do it to make the meaning clear. For example,

try modifying the sentence "I hit him in his eye" with the word "only." You can stick the modifier in seven places, and it can mean six different things.

Numbers. Write out zero and numbers less than 10. Use numerals for numbers 10 and up, except when they begin a sentence. Never use Roman numerals, unless they are part of a proper noun.

Examples: "John Smith II" or "World War II."

Percent. Percent is one word, written out instead of a symbol. Always use with a numeral, except when beginning a new sentence.

Examples:

"Defendant owns 51 percent of the company."

"Sixty-five percent of the proceeds were supposed to be paid to plaintiff."

Serial commas. According to AP style, we do not put a comma before "and" in a list, unless it helps make the list more easily understood.

<u>Example:</u> "Fraud, theft and embezzlement." <u>Not</u> "Fraud, theft, and embezzlement;" also: "Fraud, theft, and negligent and intentional misrepresentation."

Slang. Be casual, but not cavalier. For example, do not use the word "ass" unless you are quoting the complaint.

Titles. All book titles except the Bible and reference works should be placed in quotation marks, as should TV shows, songs and movies.

Spell Check

Always run spell check before you send out your report. Typos and misspellings make us look sloppy, lazy and unprofessional. They also erode our credibility, which is a journalist's main currency. There is no excuse for sending a report without running spell check.

That said, some legal terms are not in the spell check database. For example, spell check will try to change "tortious" to "tortuous," a very different word. If spell check highlights the word, and you are unsure of the correct spelling, refer to the complaint it came from, or – better yet – check a dictionary. Often the complaints themselves just plain get it wrong. The AP Stylebook, the Law.com Dictionary (http://dictionary.law.com) and Merriam-Webster Online (www.m-w.com) are more reliable sources.

G. ORDER OF REPORT ENTRIES

We order by importance, not by date filed.

The general order should be as follows:

Cases with PDF links. Big news, class actions, antitrust, securities/fraud/intentional torts, employment, defamation, environmental, slip and falls against huge companies and other cases against huge companies that don't fit any of the case types listed above, then others by case type.

[&]quot;Plaintiff charges 6 percent interest."

Cases without PDF links. Cases for contract, slip and fall and other types of premises liability, collections, removals and transfers, cases that are a dime a dozen in your court like quiet title cases or underinsured motorist complaints, then car collisions at the very bottom.

Docketed cases no longer go at the very bottom of the report. Intersperse them with the cases without PDFs by how important they seem to be based on the cause of action. (See the rules for docketing to determine whether and when to include dockets in your published reports.)

H. MESSAGES

If the main or anchor section in a report will not be published, include a message at the bottom of the report. If an entire report won't be published on a Monday through Friday, publish a report with a message only that day or put a message at the top of the report the day before the closure indicating the next day's report won't publish due to a court closure.

COMMUNICATION

Because CNS is so spread out geographically, it is supremely important to communicate promptly and frequently with your editor, other CNS employees and subscribers. It is a grave mistake for a CNS reporter to ignore an email or phone call. Given the amount of autonomy this job offers there is no excuse for not getting back to someone within a reasonable amount of time.

With your editors. Check in with your immediate editor at least once a week. Your editor expects a timely response when he or she contacts you by phone or email.

With the court staff. In dealing with courtroom personnel, you should be courteous, diplomatic and persistent in obtaining prompt access to new cases. Bear in mind that court employees need to accomplish their tasks while allowing the media access to public documents. Your job as a reporter relies heavily on the court staff.

For this reason, it is essential to develop a good rapport with the clerks. If they merely don't mind you, you'll get treated like everyone else. If they genuinely like you, they'll go out of their way to get you what you need. Keep your ears open for birthdays and other office celebrations – and don't hesitate to show up with homemade chocolate chip cookies every once in a while. Your tokens of thoughtfulness will make your job a whole lot easier.

With subscribers. If a subscriber emails you with a question or problem you don't know how to handle, either forward the message to home@courthousenews.com, or give the subscriber the number to our home office in California: 626.577.6700.

II. COMMON ERRORS

We compiled a list of the most common grammatical and spelling errors reporters make. Please read them carefully.

WORD OR PHRASE	CORRECT USAGE
Broadcast	The past tense is also "broadcast," not "broadcasted"
Canceled	Spelled with only one "I"
Carpal tunnel syndrome	Do not write "carpel"
caesarean section	Note the "ae;" can be shortened to "C-section"
Co-worker/Co-defendant	Any occupation or status will retain the hyphen
Disburse/disperse	Use "disburse" when you mean to spend or distribute money; "disperse" means to break up and scatter
Electrocute	Electrocute means "to kill with electricity;" if the person is not dead, then "electrocute" is wrong
Female/male	"Female" and "male" are adjectives. You can hire or fire a female worker, but you don't hire a female; you hire a woman
Him/his	Say "plaintiff was fired due to his having diabetes," not due to "him having"
Internet	Capitalize the "I" in "Internet"
Its/it's	"Its" is a possessive and has no apostrophe; "It's" is a contraction for "it is"
Libel/liable	"Libel" is written defamation; "liable" refers to liability
Lie/lay	"Lie" is intransitive; "lay" is transitive. In other words, "lie" has no direct object, but "lay" does. You lie down, but you lay down your arms. If the verb has an object, it's "lay." If it involves a person becoming supine, it's "lie."
Масе	Always capitalize the trade name Mace
Misappropriation/ misrepresent	No hyphens in either word
Mislead	The past tense of "mislead" is "misled"
Money/monies	Always use the term "money," never "monies"
Plurals	Plurals do not require an apostrophe before the "s;" the apostrophe makes it possessive, not plural
Possessives	Singular possessives require an apostrophe before the "s;" plural possessives require an apostrophe after the "s"
Prostate	"Prostate" is the gland; "prostrate" means "lying flat"

Principal/principie	The noun "principal" refers to the school official or money; the adjective means "main" or "primary." "Principle" refers to a standard	
Rescission	This is the correct spelling; note the "sc"	
Social Security	Always capitalize Social Security when referring to the government program	
Superseding	The proper spelling is with an "s," not a "c"	
Taser	Like Mace, the trade name Taser should be capitalized	
Wal-Mart	Written with a dash and capital "M"	
Website	Website is one word	
Who/whom	"Who" is the subject case; "Whom" is the objective case. To determine which word to use, substitute the word "they" or "them" for "who/whom." If you would use "they," it's "who." If you would use "them," it's "whom"	
ZIP code	Use all caps	

III. SPECIFIC TERMS & DINGER KEYWORDS

A guide to using specific terms and dinger keywords in complaint identifiers

General category	Keywords	Use when you have:
PROFESSIONAL NEGLIGENCE	Elder abuse	Nursing home abuse; use only if the phrase "elder abuse" appears in the complaint
	Legal malpractice	Professional negligence/ negligence regarding the provision of legal services
	Fiduciary duty	Fiduciary duty (not related to securities laws)
	Medical malpractice	Professional negligence/ health-care provider negligence
PERSONAL INJURY	Slip and fall	Personal injury involving a slip
	Trip and fall	Personal injury involving a trip
	Premises liability	Non slip/trip injury in which the landowner is being sued for an injury that took place on the property
	FELA	Personal injury while working on a government-regulated jobsite
	Marine personal injury or Jones Act	Jones Act/injury occurring at sea
	Workplace injury	All other jobsite injuries
	Car collision	Injury and damages involving a car collision
	Asbestos	Case involving asbestos- related injuries
	Product liability	Malfunctioning/defective products
	Assault	Assault (threat with the intent of physical harm)
	Battery	Battery (actual physical harm)
	Libel	Libel
	Slander	Slander
	Defamation	Defamation

PERSONAL INJURY (CONT'D)	Negligent hiring	Defendant's employee injured the plaintiff
CONTRACT/FRAUD	Insurance contract	Breach of contract involving an insurance contract
	Lease	Failure to pay rent on housing/property
	Equipment Lease	Failure to pay rent on equipment
	Consumer warranty	Car manufacturer warranty violations/lemon law/Magnussen-Moss/Song- Beverly/ Consumer Legal Remedies Act
	Habitability	Defects in rental housing
	Wrongful eviction	Breach of rental agreement in which landlord tries to illegally evict tenant
	Contract	Failure to pay money due under a contract, esp. construction, early termination, all other contract cases
	Collections	Open book, money due for goods/services
	Mechanic's lien	Foreclosure on mechanic's lien (usually goes with breach of contract)
	Unfair debt collection	Rosenthal Act or cases alleging violations by debt collectors
	Unfair credit reporting	Fair Credit Reporting Act violations
	Fraud	Defendant promised one thing and did something else, lying, cheating, etc.
	Misrepresentation	Defendant presented something falsely or inaccurately
	Intentional interference with economic relations	A party damages another party's contractual or other business relationship on purpose
	Construction defects	Breach of contract to do quality construction work

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CONTRACT/FRAUD (CONT'D)	Bad faith	Breach of the covenant of good faith and fair dealing; Example: an insurance company manipulated the contract language to deny a legitimate claim
LABOR/EMPLOYMENT	Employment	Labor code violations including failure to pay wages, provide wage statements or allow breaks
	Employment and For example,wrongful termination. Or discrimination. (Types include race, gender, pregnancy, family leave, disability) Orretaliation. Orwhistle-blower retaliation. Orsexual harassment. Example: Employment and gender discrimination. Example: Employment and retaliation.	Cases alleging civil rights violations by an employer, including: ADA violations in employment (disability discrimination) Sexual harassment FEHA violations (race/age/national origin/gender discrimination) FMLA violations (pregnancy, medical, disability discrimination) Wrongful termination
CORPORATE/BUSINESS	Antitrust	Sherman/Cartwright acts/price-fixing
	Securities	Violations of securities laws, shareholder suits or fiduciary duty owed to stockholders
	RICO	Racketeer Influenced and Corrupt Organizations

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CORPORATE/BUSINESS LAW (CONT'D)	Unfair business practices	Consumer rights violations/unfair tactics by businesses to the detriment of consumers; usually tacked on to other causes of action, including employment
	Unfair competition	One party gains an undeserved advantage over another party, usually another business
	False advertising	Use of false or misleading statements in advertising, usually about a product, that can negatively affect consumers and other stakeholders
CIVIL RIGHTS	ADA	Inadequate facilities for the disabled, not employment-related
	Housing discrimination or Race discrimination	Non-employment discrimination in housing, racial profiling, etc., including Fair Employment and Housing Act violations
	Civil rights (Unless you have a more specific option, like Assault, Excessive force, False imprisonment)	Civil rights violations by police or the courts
PROPERTY	Copyright	Using plaintiff's copyrighted materials
	Trademark	Using plaintiff's name/logos
a y	Patent	Using plaintiff's products or processes without a license
	Trade secrets	A former employee absconds with confidential info, or another company steals it
	Negligence	Property damage caused by someone else's error
	FOIA	Freedom of Information Act
MISCELLANEOUS	Environmental tort	Contamination/spills/pollution
	To confirm an arbitration award	Petitioner wants court to order respondent to comply with terms
	Mandate/Mandamus	Petitioner wants court to order respondent to do something

(292 of 297), Page 292 of 2**92** ase: 24-6697, 03/06/2025, DktEntry: 10.9, Page 292 of 297 Case 1:21-cv-00305-DCN Document 60-14 Filed 12/15/22 Page 20 of 25

MISCELLANEOUS (CONT'D)	Subrogation	Complaint to recover money/damages owed to someone else, usually an insurance company on behalf of its insured
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Notes.

Leave out "Breach of" before contract, warranty, fiduciary duty, etc.

Leave out "Violation of" before the name of an act.

Leave out "infringement" after copyright, trademark, patent, etc.

Leave out "Petition" from summaries on petitions. We no longer use "Labor" as a cause of action for cases involving unpaid wages or other labor code violations. Use "Employment" instead.

IV. COVERAGE DO'S & DON'TS

A quick reference of the cases we do and do not cover

Do	Don't
Asbestos	Annulment
Bankruptcy appeals	Bond forfeiture
Bankruptcy withdrawals	Change of name
Car collision	Criminal (with the exception of newsworthy or white-collar indictments in federal court for which a press release issues)
Contract	Custody
Civil rights acts	Declaration of taking
Collections	Divorce
Consent Decree	Driver's license suspension or revocation and challenges of such decisions
Diet drug	Forfeited recognizance
Equity (individual v. corporation)	Habeas corpus
Fraud	JD municipal claim
Judgment (Exemplification, Registration, Confession, Foreign)	Jury contempt
Legal malpractice	Liens (Report lien foreclosures but not liens)
Mandate/Mandamus	Motions (Report if federal "mc" or "ms" case)
Medical malpractice	NISI forfeiture
Negligence	Pro se prisoner suits
Petition for approval of a contract with a minor	Student loans
Pharmaceutical tort	3
Personal injury	
Product warranty liability	
Replevin	*
Seizure/Forfeiture (in federal court)	Seizure/Forfeiture (in state court)
Sexual harassment	
Trespass	
Transfers	
Workers' compensation	
Wrongful death	
Wrongful foreclosure (in which an individual is challenging a bank foreclosure)	Mortgage/foreclosures (in which a bank or other financing entity is foreclosing upon someone's home)

V. UPLOADING

The main objective is to upload enough to keep your subscribers happy without wasting time uploading cases nobody cares about. Although deciding which complaints to upload sometimes seems to involve a series of constantly shifting, interconnected variables, only the three things really matter: the defendant in the complaint, the nature of the complaint and the newsworthiness of the complaint - all filtered through the lens of your personal experience and the advice of your editor.

When in doubt, upload.

Note: We do not upload exhibits, cover sheets or summonses. We upload complaints only.

Defendants.

Big defendants mean downloads; 90 percent of your decision to upload is determined by whether or not the complaint names a recognizable defendant. Subscribers will download a case about chewing gum if Microsoft is a defendant. On the other hand, you can have a huge class action, but if it's against East Regional Sprockets Inc., nobody cares. That being said, you should always upload class actions.

You know if a defendant is big usually just by recognizing the name. Have you heard it mentioned on TV or in the news? Is it a name your friend, parents or grandparents would know? IBM, Ford Motor Company, Federal Express, Google, Apple, Wal-Mart — look out for the big names in American business. Reading the business section of newspapers and watching financial news shows on TV are good ways to familiarize yourself with different companies.

Nature of the case.

Class actions are important cases and should always be uploaded. If you look at a page and see the words "class action" next to a word like, say, "Google," you know you are staring at a hot case. A class action against any remotely recognizable defendant almost always get downloads.

Complaints filed under the less-restrictive "on behalf of the general public" standard also deserve special attention. Private attorney general actions, as such cases are known in California, possibly involve more people than the plaintiffs named on the complaint, and so are of much interest to subscribers. Similarly, a complaint alleging unfair business practices that affects many insurance policyholders will be of more interest than one that deals with an isolated case.

Finally, the dollar amount at issue could tip the scales. If it's a boring case but involves more than a few hundred thousand dollars, generally speaking you should upload it.

Newsworthiness.

When a company or story is in the news and is the source of public interest, you should upload related complaints that you otherwise would not. For instance, while we don't typically upload excessive force and or other civil rights complaints against the police, when the Oakland Police Department beat and pepper-sprayed seemingly peaceful Occupy protesters, it made national news and any resulting lawsuits should have been uploaded.

Likewise, uniqueness can play a major role in determining subscriber interest. An unusual employment discrimination action is more interesting than a routine contract complaint. Class actions for unfair competition are rare; lease complaints are a dime a dozen.

The "x factor."

Another factor informing all of these decisions will be your own experience and the preferences of the subscribers to your report. If you know that many of your subscribers are concerned with a certain type of litigation, be sure to upload such cases. And when in doubt, upload. If you put up a few cases that you think should be huge and no one bites, eventually you'll know not to waste your time uploading cases of that type.

VI. Uploading Do's & Don'ts

A quick reference guide of the cases we generally do and do not upload

DO UPLOAD	DON'T UPLOAD
Antitrust	Asbestos
Securities	Eminent domain/Quiet title/Partition of property
Most cases against a large law firm or big national businesses like Microsoft, Samsung, Google, Shell, Wal-Mart, Walgreens, etc.	Contract/Lease/Collections (when a small sum of money or lesser-known defendant is involved)
Class actions	Car collision/Un/underinsured motorist
Environment/Toxic waste	Dissolution of corporation/partnership
Defamation/Libel/Slander	Failure to cover car insurance claim
Fraud	Medical malpractice (unless wrongful death is also alleged)
Employment	False arrest/civil rights against police
Legal malpractice	Pharmaceutical product liability (but only when a large number of similar cases have already been filed)
Newsworthy cases	Premises liability/slip or trip and fall (unless the defendant is large and/or nationally known)
Unfair competition/Deceptive business practices/False advertising/ Trade secrets	Free Appropriate Public Education actions
Patent/Trademark/Copyright (but not enforcement actions against knock-off sellers)	Lemon law cases
Private attorney general actions (PAGA)	ERISA (for unpaid contributions to a union or fund)
Nursing home/Elder abuse	Mechanic's lien
ERISA (for denial of benefits)	Mortgage foreclosure (in which a bank is foreclosing upon someone's home)
Construction defects	Nuisance
Wrongful death	Removals/Transfers
	Workers' compensation

VII. Pitching the News

Pitching not only newsworthy cases but also local news with national import or news that is just plain fascinating is part of your job.

- If something is happening in your community that is national news or related to national news, immediately let your editor(s) know. The Baltimore riots and the Charleston shooting are prime examples of national news stories for which our reporters had excellent coverage.
- Stay in touch with news happening near you. Read the paper. If something is
 happening in your backyard, like a high-profile trial, a protest about a national
 issue, an environmental catastrophe or anything else that is newsworthy, your
 job is to pitch it.
- If you see something on your daily report that looks newsworthy or interesting, immediately let your editor(s) know. If you don't know to whom to pitch stories, ask your direct editor. Attach the complaint to your email and describe the suit in the body. If you have already written the summary, copy and paste it from document view.

We no longer see our competition as just the other researchers those of you who cover courts in person might see every day sitting at the computer terminal next to you. We're now competing with the New York Times, the Washington Post and every other major news outlet.